

**UNITED STATES  
SECURITIES AND EXCHANGE COMMISSION  
Washington, D.C. 20549**

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**FORM N-2  
REGISTRATION STATEMENT  
UNDER**

**THE SECURITIES ACT OF 1933**

**Pre-Effective Amendment No. 4**

**Post-Effective Amendment No.**

**Silver Spike Investment Corp.**  
(Exact name of registrant as specified in charter)

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660 Madison Avenue, Suite 1600  
New York, NY 10065  
(212) 905-4923

(Address and telephone number, including area code, of principal executive offices)

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**Approximate date of proposed public offering:** As soon as practicable after the effective date of this Registration Statement.

- Check box if the only securities being registered on this Form are being offered pursuant to dividend or interest reinvestment plans.
- Check box if any securities being registered on this Form will be offered on a delayed or continuous basis in reliance on Rule 415 under the Securities Act of 1933 ("Securities Act"), other than securities offered in connection with a dividend reinvestment plan.
- Check box if this Form is a registration statement pursuant to General Instruction A.2 or a post-effective amendment thereto.
- Check box if this Form is a registration statement pursuant to General Instruction B or a post-effective amendment thereto that will become effective upon filing with the Commission pursuant to Rule 462(e) under the Securities Act.
- Check box if this Form is a post-effective amendment to a registration statement filed pursuant to General Instruction B to register additional securities or additional classes of securities pursuant to Rule 413(b) under the Securities Act.

**It is proposed that this filing will become effective (check appropriate box):**

- when declared effective pursuant to Section 8(c).
-

**If appropriate, check the following box:**

- This [post-effective] amendment designates a new effective date for a previously filed [post-effective amendment] [registration statement].
- This Form is filed to register additional securities for an offering pursuant to Rule 462(b) under the Securities Act, and the Securities Act registration statement number of the earlier effective registration statement for the same offering is: .
- This Form is a post-effective amendment filed pursuant to Rule 462(c) under the Securities Act, and the Securities Act registration statement number of the earlier effective registration statement for the same offering is: .
- This Form is a post-effective amendment filed pursuant to Rule 462(d) under the Securities Act, and the Securities Act registration statement number of the earlier effective registration statement for the same offering is: .

**Check each box that appropriately characterizes the Registrant:**

- Registered Closed-End Fund (closed-end company that is registered under the Investment Company Act of 1940 (“Investment Company Act”).
- Business Development Company (closed-end company that intends or has elected to be regulated as a business development company under the Investment Company Act).
- Interval Fund (Registered Closed-End Fund or a Business Development Company that makes periodic repurchase offers under Rule 23c-3 under the Investment Company Act).
- A.2 Qualified (qualified to register securities pursuant to General Instruction A.2 of this Form).
- Well-Known Seasoned Issuer (as defined by Rule 405 under the Securities Act).
- Emerging Growth Company (as defined by Rule 12b-2 under the Securities Exchange Act of 1934 (“Exchange Act”).
- If an Emerging Growth Company, indicate by check mark if the Registrant has elected not to use the extended transition period for complying with any new or revised financial accounting standards provided pursuant to Section 7(a)(2)(B) of the Securities Act.
- New Registrant (registered or regulated under the Investment Company Act for less than 12 calendar months preceding this filing).

**CALCULATION OF REGISTRATION FEE UNDER THE SECURITIES ACT OF 1933**

<b>Title of Securities Being Registered</b>	<b>Amount Being Registered(1)</b>	<b>Proposed Maximum Offering Price Per Unit</b>	<b>Proposed Maximum Aggregate Offering Price(1)(2)</b>	<b>Amount of Registration Fee(3)</b>
Common Stock, \$0.01 par value per share	10,267,858	\$14.00	\$143,750,012	\$13,325.63

(1) Includes the underwriters’ option to purchase up to 1,339,286 additional shares of our common stock.

(2) Estimated pursuant to Rule 457(a) under the Securities Act of 1933 solely for the purpose of determining the registration fee.

(3) The Registrant previously paid a registration fee of \$18,820 in connection with the prior filings of this Registration Statement.

**The Registrant hereby amends this Registration Statement on such date or dates as may be necessary to delay its effective date until the Registrant shall file a further amendment which specifically states that this Registration Statement shall thereafter become effective in accordance with Section 8(a) of the Securities Act of 1933 or until the Registration Statement shall become effective on such date as the Securities and Exchange Commission, acting pursuant to said Section 8(a), may determine.**

**The information in this prospectus is not complete and may be changed. The securities may not be sold until the registration statement filed with the Securities and Exchange Commission is effective. This prospectus is not an offer to sell nor does it seek an offer to buy these securities in any jurisdiction where the offer or sale is not permitted.**

**PRELIMINARY PROSPECTUS**

**SUBJECT TO COMPLETION, DATED JANUARY 3, 2022**

# **Silver Spike Investment Corp.**

## **8,928,572 Shares**

### **Common Stock**

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We are a newly organized specialty finance company formed to invest across the cannabis ecosystem through investments in the form of direct loans to, and equity ownership of, privately held cannabis companies. We were formed in January 2021 as a Maryland corporation and structured as an externally managed, closed-end, non-diversified management investment company. We have elected to be treated as a business development company under the Investment Company Act of 1940, as amended.

All of our investments are designed to be compliant with all applicable laws and regulations within the jurisdictions in which they are made or to which we are otherwise subject, including U.S. federal laws. We will make equity investments only in companies that are compliant with all applicable laws and regulations within the jurisdictions in which they are located or operate, including U.S. federal laws. We may make loans to companies that we determine based on our due diligence are licensed in, and complying with, state-regulated cannabis programs, regardless of their status under U.S. federal law, so long as the investment itself is designed to be compliant with all applicable laws and regulations in the jurisdiction in which the investment is made or to which we are otherwise subject, including U.S. federal law. We are externally managed by Silver Spike Capital, LLC (“SSC” or the “Adviser”) and seek to expand the compliant cannabis investment activities of SSC’s leading investment platform in the cannabis industry. SSC will also provide the administrative services necessary for us to operate. We primarily seek to partner with private equity firms, entrepreneurs, business owners and management teams to provide credit and equity financing alternatives to support buyouts, recapitalizations, growth initiatives, refinancings and acquisitions across cannabis companies, including cannabis-enabling technology companies, cannabis-related health and wellness companies, and hemp and cannabidiol (“CBD”) distribution companies. Under normal circumstances, each such cannabis company derives at least 50% of its revenues or profits from, or commits at least 50% of its assets to, activities related to cannabis at the time of our investment in the cannabis company. We are not required to invest a specific percentage of our assets in such cannabis companies, and we may make debt and equity investments in other companies in the health and wellness sector.

Our investment objective is to maximize risk-adjusted returns on equity for our shareholders. We will seek to capitalize on what we believe to be nascent cannabis industry growth and drive return on equity by generating current income from our debt investments and capital appreciation from our equity and equity-related investments. We intend to achieve our investment objective by investing primarily in secured debt, unsecured debt, equity warrants and direct equity investments in privately held businesses. We intend that our debt investments will often be secured by either a first or second priority lien on the assets of the portfolio company, can include either fixed or floating rate terms and will generally have a term of between three and six years from the original investment date. In some of our portfolio investments, we expect to receive nominally priced equity warrants and/or make direct equity investments in connection with a debt investment. In addition, a portion of our portfolio may be comprised of derivatives, including total return swaps.

The companies in which we intend to invest will typically be highly leveraged, and, in most cases, our investments in such companies will not be rated by any rating agency. If such investments were rated, we believe that they would likely receive a rating from a nationally recognized statistical rating organization of below investment grade (i.e., below BBB- or Baa), which is often referred to as “junk.” Exposure to below investment grade securities involves certain risks, and those securities are viewed as having predominately speculative characteristics with respect to the issuer’s capacity to pay interest and repay principal.

We are an “emerging growth company” under the federal securities laws and will be subject to reduced public company reporting requirements.

**An investment in our common stock is very risky and highly speculative. Shares of closed-end investment companies, including business development companies, frequently trade at a discount to their net asset value. If our shares trade at a discount to our net asset value, it may increase the risk of loss for purchasers in this offering.**

**In addition, the companies in which we invest are subject to special risks, including risks associated with investing in cannabis companies and the cannabis industry generally, such as:**

- **Cannabis, except for hemp, is currently illegal under U.S. federal law and in other jurisdictions, and strict enforcement of federal laws would likely result in our inability to execute our business plan.**
- **Our investment opportunities are limited by the current illegality of cannabis under U.S. federal law, and change in the laws, regulations and guidelines that impact the cannabis industry may cause adverse effects on our ability to make investments.**
- **Strict enforcement of U.S. federal laws regarding cannabis would likely result in our portfolio companies’ inability to execute a business plan in the cannabis industry, and could result in the loss of all or part of any of our loans.**
- **Certain assets of our borrowers may not be used as collateral or transferred to us due to applicable state laws and regulations governing the cannabis industry, and such restrictions could negatively impact our profitability.**

See **“Risk Factors”** to read about factors you should consider, including the risk of leverage, before investing in our common stock.

A substantial portion of our debt investments will have variable interest rates that reset periodically based on benchmarks such as London-Interbank Offered Rate (or successors thereto) and the prime rate. As a result, our portfolio should be partially insulated from significant increases in such benchmarks in the future. However, such increases would make it more difficult for the borrowers to service their obligations under the debt investments that we will hold.

We intend to elect to be treated, and intend to qualify annually to be treated, as a regulated investment company under Subchapter M of the Internal Revenue Code for U.S. federal income tax purposes, commencing with our first taxable year ending after the completion of this offering.

**This is our initial public offering and our shares of common stock have no history of public trading.**

We expect that the initial public offering price per share of our common stock will be \$14.00 per share. Our common stock has been approved for listing on the Nasdaq Stock Market under the symbol "SSIC."

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This prospectus contains important information about us that a prospective investor should know before investing in our common stock. Please read this prospectus before investing, and keep it for future reference. Upon the completion of this offering, we will file annual, quarterly and current reports, proxy statements and other information about us with the Securities and Exchange Commission. This information will be available free of charge by contacting us by mail at 660 Madison Avenue, Suite 1600, New York, NY 10065 or by telephone at (212) 905-4923 or on our website at [ssic.silverspikecap.com](http://ssic.silverspikecap.com). The Securities and Exchange Commission also maintains a website at [www.sec.gov](http://www.sec.gov) that contains such information. Information contained on our website is not incorporated by reference into this prospectus, and you should not consider that information to be part of this prospectus.

**Neither the Securities and Exchange Commission nor any state securities commission has approved or disapproved of these securities or determined if this prospectus is truthful or complete. Any representation to the contrary is a criminal offense.**

	<u>Per Share</u>	<u>Total(1)</u>
Public Offering Price	\$14.00	\$125,000,008
Sales Load (Underwriting Discounts and Commissions)(2)	\$0.84	\$5,500,000
Proceeds to us, before expenses(3)	\$13.16	\$119,500,008

(1) We have granted the underwriters a 30-day option, which we refer to as the over-allotment option, to purchase up to an additional 1,339,286 shares of our common stock at the public offering price, less sales load (underwriting discounts and commissions). If the over-allotment option is exercised in full, the total public offering price will be approximately \$143.75 million, the total sales load (underwriting discounts and commissions) will be approximately \$6.625 million, and the total proceeds to us, before expenses, will be approximately \$137.125 million. See “Underwriting.”

(2) A sales load (underwriting discount and commission) of 2.00% will be paid on 3,571,429 shares sold to the Adviser. See “Control Persons and Principal Stockholders.”

(3) We estimate that we will incur offering expenses of approximately \$1.45 million, or approximately \$0.16 per share, in connection with this offering.

The underwriters expect to deliver the shares on or about \_\_\_\_\_, 2022 .

**Stifel**  
**Canaccord Genuity**

**Piper Sandler**  
**Cantor**

Prospectus dated \_\_\_\_\_, 2022

You should rely only on the information contained in this prospectus. We have not, and the underwriters have not, authorized any other person to provide you with different information or to make representations as to matters not stated in this prospectus. If anyone provides you with different or inconsistent information, you should not rely on it. We are not, and the underwriters are not, making an offer to sell these securities in any jurisdiction where the offer or sale is not permitted. You should assume that the information appearing in this prospectus is accurate only as of the date on the front cover of this prospectus. Our business, financial condition, results of operations and prospects may have changed since that date. We will update these documents to reflect material changes only as required by law.

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## PROSPECTUS SUMMARY

*This summary highlights some of the information in this prospectus. It is not complete and may not contain all of the information that you may want to consider. You should read the entire prospectus carefully, including the section entitled “Risk Factors” before making a decision to invest in our common stock.*

*Unless otherwise noted, the terms “we,” “us,” “our,” the “Company” and “SSIC” refer to Silver Spike Investment Corp. In addition, the terms “SSC,” “Adviser,” “investment adviser” and “administrator” refer to Silver Spike Capital, LLC, our external investment adviser and administrator.*

*Unless indicated otherwise or the context requires, all information in this prospectus assumes (i) an initial public offering price of \$14.00 per share and (ii) no exercise of the underwriters’ over-allotment option to purchase additional shares of our common stock.*

### **Silver Spike Investment Corp.**

We are a newly organized specialty finance company formed to invest across the cannabis ecosystem through investments in the form of direct loans to, and equity ownership of, privately held cannabis companies. All of our investments are designed to be compliant with all applicable laws and regulations within the jurisdictions in which they are made or to which we are otherwise subject, including U.S. federal laws. We will make equity investments only in companies that are compliant with all applicable laws and regulations within the jurisdictions in which they are located or operate, including U.S. federal laws. We may make loans to companies that we determine based on our due diligence are licensed in, and complying with, state-regulated cannabis programs, regardless of their status under U.S. federal law, so long as the investment itself is designed to be compliant with all applicable laws and regulations in the jurisdiction in which the investment is made or to which we are otherwise subject, including U.S. federal law. We are externally managed by Silver Spike Capital, LLC (“SSC” or the “Adviser”) and seek to expand the compliant cannabis investment activities of SSC’s leading investment platform in the cannabis industry. We primarily seek to partner with private equity firms, entrepreneurs, business owners and management teams to provide credit and equity financing alternatives to support buyouts, recapitalizations, growth initiatives, refinancings and acquisitions across cannabis companies, including cannabis-enabling technology companies, cannabis-related health and wellness companies, and hemp and cannabidiol (“CBD”) distribution companies. Under normal circumstances, each such cannabis company derives at least 50% of its revenues or profits from, or commits at least 50% of its assets to, activities related to cannabis at the time of our investment in the cannabis company. We are not required to invest a specific percentage of our assets in such cannabis companies, and we may make debt and equity investments in other companies in the health and wellness sector.

Our investment objective is to maximize risk-adjusted returns on equity for our shareholders. We will seek to capitalize on what we believe to be nascent cannabis industry growth and drive return on equity by generating current income from our debt investments and capital appreciation from our equity and equity-related investments. We intend to achieve our investment objective by investing primarily in secured debt, unsecured debt, equity warrants and direct equity investments in privately held businesses. We intend that our debt investments will often be secured by either a first or second priority lien on the assets of the portfolio company, can include either fixed or floating rate terms and will generally have a term of between three and six years from the original investment date. We expect our secured loans to be secured by various types of assets of our borrowers. While the types of collateral securing any given secured loan will depend on the nature of the borrower’s business, common types of collateral we expect to secure our loans include real property and certain personal property, including equipment, inventory, receivables, cash, intellectual property rights and other assets to the extent permitted by applicable laws and the regulations governing our borrowers. Certain attractive assets of our borrowers, such as cannabis licenses and cannabis inventory, may not be able to be used as collateral or transferred to us. See “Risk Factors—Risks Relating to Our Investments—Certain assets of our borrowers may not be used as collateral or transferred to us due to applicable state laws and regulations governing the cannabis industry, and such restrictions could negatively impact our profitability.” In some of our portfolio investments, we expect to receive nominally priced equity warrants and/or make direct equity investments in connection with a debt investment. In addition, a portion of our portfolio may be comprised of derivatives, including total return swaps.

Generally, the loans in which we expect to invest will have a complete set of financial maintenance covenants, which are used to proactively address materially adverse changes in a portfolio company's financial performance. However, to a lesser extent, we may invest in "covenant-lite" loans. We use the term "covenant-lite" to refer generally to loans that do not have a complete set of financial maintenance covenants. Generally, "covenant-lite" loans provide borrower companies more freedom to negatively impact lenders because their covenants are incurrence-based, which means they are only tested and can only be breached following an affirmative action of the borrower, rather than by a deterioration in the borrower's financial condition. Accordingly, to the extent we invest in "covenant-lite" loans, we may have fewer rights against a borrower and may have a greater risk of loss on such investments as compared to investments in or exposure to loans with a complete set of financial maintenance covenants.

The loans in which we tend to invest typically pay interest at rates which are determined periodically on the basis of the London-Interbank Offered Rate, or "LIBOR," plus a premium. The loans in which we expect to invest are typically made to U.S. and, to a limited extent, non-U.S. (including emerging market) corporations, partnerships and other business entities which operate in various industries and geographical regions. These loans typically are rated below investment grade. Securities rated below investment grade are often referred to as "high-yield" or "junk" securities, and may be considered a higher risk than debt instruments that are rated above investment grade.

We expect to invest in loans made primarily to private leveraged middle-market companies with approximately \$5 million to \$50 million of earnings before interest, taxes, depreciation and amortization, or "EBITDA." Our business model is focused primarily on the direct origination of investments through portfolio companies or their financial sponsors. We expect that our investments will generally range between \$5 million and \$40 million each, although we expect that this investment size will vary proportionately with the size of our capital base. We have an active pipeline of investments and are currently reviewing over \$1.1 billion of potential investments in varying stages of underwriting.

We will be externally managed by Silver Spike Capital, LLC. SSC will also provide the administrative services necessary for us to operate. We believe that our ability to leverage the existing investment management platform of SSC will enable us to operate more efficiently and with lower overhead costs than other newly formed funds of comparable size.

We were formed in January 2021 as a Maryland corporation and structured as an externally managed, closed-end, non-diversified management investment company. We have elected to be treated as a business development company, or BDC, under the Investment Company Act of 1940, as amended (the "1940 Act"). In addition, for U.S. federal income tax purposes we intend to elect to be treated, and intend to qualify annually to be treated, as a regulated investment company, or RIC, under Subchapter M of the Internal Revenue Code of 1986, as amended, which we refer to as the "Code," commencing with our first taxable year ending after completion of this offering.

As a BDC, we will be required to comply with regulatory requirements, including limitations on our use of debt. We will be permitted to, and expect to, finance our investments through borrowings. However, as a BDC, we will only generally be allowed to borrow amounts such that our asset coverage, as defined in the 1940 Act, equals at least 150% after such borrowing. Under a 150% asset coverage ratio a BDC may borrow \$2 for investment purposes for every \$1 of investor equity. The amount of leverage that we employ will depend on our assessment of market conditions and other factors at the time of any proposed borrowing, such as the maturity, covenant package and rate structure of the proposed borrowings, our ability to raise funds through the issuance of shares of our common stock and the risks of such borrowings within the context of our investment outlook. Ultimately, we only intend to use leverage if the expected returns from borrowing to make investments will exceed the cost of such borrowing. We are currently targeting a debt-to-equity ratio of 0.50x (i.e., we aim to have one dollar of equity for each \$0.50 of debt outstanding).

As a RIC, we generally will not have to pay corporate-level federal income taxes on any net ordinary income or realized net capital gains that we distribute to our stockholders if we meet certain source-of-income, income distribution and asset diversification requirements.



## The Investment Adviser

Silver Spike Capital, LLC will manage the company and oversee all of its operations. SSC is registered as an investment adviser under the Investment Advisers Act of 1940, as amended, or the “Advisers Act.” Our Adviser serves pursuant to the investment advisory agreement (the “Investment Advisory Agreement”) in accordance with the Advisers Act, under which it receives a base management fee and an incentive fee from us. The base management fee is calculated as a percentage of our gross assets (i.e., total assets held before deduction of any liabilities), which includes investments acquired with the use of leverage and excludes cash and cash equivalents. The incentive fee is calculated as a percentage of our ordinary income and capital gains.

We benefit from our Adviser’s ability to identify attractive investment opportunities, conduct diligence on and value prospective investments, negotiate investments and manage a portfolio of those investments. The principals of our Adviser have broad investment backgrounds, with prior experience at investment funds, investment banks and other financial services companies and have developed a broad network of contacts within the private equity community. This network of contacts provides our principal source of investment opportunities.

The key principals and members of senior management and the Investment Committee of our Adviser are Scott Gordon, our Chief Executive Officer and our Adviser’s Partner and Chief Executive Officer, Gregory Gentile, our Chief Financial Officer, Chief Compliance Officer and Secretary, and our Adviser’s Partner, Chief Financial Officer and Chief Compliance Officer, William Healy, our Adviser’s Partner and Head of Capital Formation, Frank Kotsen, CFA, our Adviser’s Partner and Credit Portfolio Manager, Dino Colonna, CFA, our Adviser’s Partner and Credit Portfolio Manager, and Umesh Mahajan, our Adviser’s Credit Portfolio Manager.

## Cannabis Market Overview

The cannabis industry has experienced significant growth over the last several years. Canada legalized cannabis for adult use in 2018, and thirty-six states, the District of Columbia, Puerto Rico, Guam and the U.S. Virgin Islands have legalized some form of whole-plant cannabis cultivation, sales and use for certain medical purposes. Eighteen of those states, the District of Columbia, Guam and Northern Mariana have also legalized cannabis for adults for non-medical purposes. Eleven additional states have legalized low-THC/high-CBD extracts for select medical conditions. The cannabis industry is amongst the fastest growing industries in the world. 2020 estimated U.S. state-legal cannabis retail sales reached \$18.0 billion, up 48% year-over-year and is expected to reach approximately \$47.5 billion by 2026, a compound annual growth rate of over 17%.<sup>1</sup> We believe continued legalization of cannabis and the normalization of cannabis and its many uses - therapeutic, recreational and general health and wellness, are creating an attractive opportunity to invest in related businesses. At the same time, the cannabis industry is highly fragmented and subject to a complex regulatory framework, creating significant barriers to entry.

The transition of the cannabis and derivative products to a regulated and legal marketplace has been happening at a rapid pace over recent years, with full legalization in Canada (2018) and legislative momentum continuing to expand the U.S. market (eleven states passing medical or recreational referenda or otherwise legalizing or decriminalizing medical or recreational cannabis since the November 2020 elections). There have been hundreds of businesses launched across various sub-sectors of the cannabis industry, many of which have raised significant amounts of capital, mainly from retail and family office investors, in both public and private markets. In addition, large multinational alcohol and tobacco companies have made strategic investments into the Canadian cannabis sector to diversify their core business while protecting against potential market share loss to cannabis.

Broadly speaking, the cannabis industry is still in its early stages, and we believe that businesses with strong management teams, deep operational expertise and financial acumen will thrive in this large and growing market. As cannabis markets continue to grow, there will be increased demand for capital on behalf of cannabis industry operators and ancillary companies serving the industry.

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<sup>1</sup> BDSA (July 2021) “BDSA’s detailed cannabis sales data from 2020 and predicted market growth by 2026”

The cannabis capital markets, both credit and equity, are still currently dominated by small funds and family offices, which we believe lack the experience and capital to navigate such a dynamic and complex environment. Furthermore, the vast majority of banks and institutional investment funds are not lending to the cannabis industry, given the current regulatory environment, creating a void in the market for credit-based solutions. Historically, cannabis firms have funded operations with equity, but as the industry matures and companies become more sensitive to equity dilution, we expect demand for credit-based solutions to increase.

The lack of competition and financing options for cannabis businesses has created an opportune environment for us to make attractive growth capital investments from an advantageous position – the ability to drive terms and enhance structural protections while capturing above average risk-adjusted returns.

### **Potential Market Trends**

We believe the middle-market lending environment provides opportunities for us to meet our goal of making investments that generate attractive risk-adjusted returns based on a combination of the following factors, which continue to remain true in the current environment, even with the economic shutdown resulting from the COVID-19 pandemic.

**Limited Availability of Capital for Cannabis Companies.** We believe that regulatory and structural changes in the market have reduced the amount of capital available generally to U.S. middle-market companies and specifically to cannabis companies. We believe that many commercial and investment banks have, in recent years, de-emphasized their service and product offerings to middle-market businesses in favor of lending to large corporate clients and managing capital markets transactions. In addition, these lenders may be constrained in their ability to underwrite and hold bank loans and high-yield securities for middle-market issuers as they seek to meet existing and future regulatory capital requirements. We also believe that there is a lack of market participants that are willing to hold meaningful amounts of certain middle-market loans. As a result, we believe our ability to minimize syndication risk for a company seeking financing by being able to hold its loans without having to syndicate them, coupled with reduced capacity of traditional lenders to serve the middle-market, present an attractive opportunity to invest in middle-market companies.

**Robust Demand for Debt and Equity Capital.** We believe U.S.-based cannabis companies will continue to require access to debt capital to support growth, refinance existing debt, and finance acquisitions. We expect that private equity sponsors and entrepreneurs will continue to pursue acquisitions and leverage their equity investments with secured and unsecured loans provided by companies such as us.

**Attractive Investment Dynamics.** An imbalance between the supply of, and demand for, cannabis debt capital creates attractive pricing dynamics. We believe the directly negotiated nature of direct lending also generally provides more favorable terms to the lender, including stronger covenant and reporting packages, better call protection, and lender-protective change of control provisions. Additionally, we believe our expertise in credit selection and in investing in the cannabis industry provides a strong basis for success.

**Conservative Capital Structures.** Given the lack of credit deployed in the federally legal cannabis industry, companies have been almost exclusively funded with equity capital from entrepreneurs, family offices and, to a lesser extent, private equity firms. The significant amount of equity invested in companies in the industry should provide us with opportunities to lend to companies that have a larger percentage of equity as a percentage of their total capitalization than other middle-market companies. With more conservative capital structures, federally legal cannabis companies can have higher levels of cash flows available to service their debt. In addition, we expect federally legal cannabis companies to have simpler capital structures than larger borrowers, which facilitates a streamlined underwriting process and, when necessary, restructuring process.

**Attractive Opportunities in Investments in Loans.** We invest in senior secured or unsecured loans, subordinated loans or mezzanine loans, equity and equity-related securities. We believe that opportunities in loans are significant because of the floating rate structure of most senior secured debt issuances and because of the strong defensive characteristics of these types of investments. Given the current low interest rate environment, we believe that debt issued with floating interest rates offer a superior return profile as compared with fixed-rate investments, since floating rate structures are generally less susceptible to declines in value experienced by fixed-rate securities in a rising interest rate environment. Senior secured debt also provides strong defensive characteristics. Senior secured debt has priority in payment among an issuer's security holders whereby holders are due to receive payment before junior creditors and equity holders. Further, these investments are secured by the issuer's assets, which may provide protection in the event of a default.

**Attractive Opportunities in Equity Investments.** We believe that opportunities to invest in the equity of federally legal cannabis businesses are significant. We expect that our ability to identify emerging businesses and to provide credit to the industry will provide us with proprietary equity investment opportunities. Our management team's experience investing in and operating businesses in the federally legal cannabis industry will help us identify high-quality businesses, and our management team's expertise will be beneficial to our portfolio companies.

## **Business Strategy**

Our investment objective is to maximize risk-adjusted returns on equity for our shareholders. We will seek to capitalize on what we believe to be nascent cannabis industry growth and drive return on equity by generating current income from our debt investments and capital appreciation from our equity and equity-related investments. We have adopted the following business strategy to achieve our investment objective. **However, there can be no assurances that we will be able to successfully implement our business strategy and, as a result, meet our investment objective.**

Our business strategy is to identify investment opportunities in businesses in the cannabis industry. All of our investments are designed to be compliant with all applicable laws and regulations within the jurisdictions in which they are made or to which we are otherwise subject, including U.S. federal laws. We believe that there is an opportunity to take advantage of a newly emerging industry, with a variety of established operators seeking access to capital and managerial expertise. We intend to leverage our team's collective operating, technical, regulatory and legal expertise to build a strong business with competitive advantages to emerge as a leading public company in the space.

As the industry continues to transition to a new legislative and regulatory framework, we believe that many companies will need a partner that can assist in providing a level of operational and financial expertise to support their growth. Our team includes a variety of investment, operational and healthcare professionals who will provide operating, technical, regulatory and legal expertise to evaluate investment opportunities. Our team includes Scott Gordon, Gregory Gentile, Dino Colonna and Robert Josephson, all of whom have extensive expertise in cannabis-related industries. Our team consists of professionals who have decades of experience in capital markets globally, have extensive scientific and medical knowledge of the plant and its many compounds and includes entrepreneurs and founders of consumer facing businesses.

Our plan is to leverage our management team's networks of industry relationships, knowledge and experience to become the leading investor in the legal cannabis industry. Over the course of their careers, the members of our management team have developed a broad network of contacts and corporate relationships that we believe will serve as a useful source of acquisition opportunities. We plan to leverage relationships with management teams of public and private companies, investment professionals at private equity firms and other financial sponsors, owners of private businesses, investment bankers, restructuring advisers, consultants, attorneys and accountants, which we believe should provide us with a number of investment opportunities.

## **Potential Competitive Advantages**

We believe that our Adviser is one of only a select group of specialty lenders that has its depth of knowledge, experience, and track record in lending to businesses in the cannabis industry. Our other potential competitive advantages include:

**Our Adviser has deep industry and operating expertise on its management team and advisory board.** Our Adviser has the ability to tap into this expertise for each of our target investment opportunities. The expertise, knowledge and experience of these individuals allows them to understand and evaluate the business plans, products and financing needs of businesses in the cannabis industry.

**Direct origination networks that benefit from relationships with entrepreneurs, business brokers and private equity firms.** Our Adviser seeks to be the first contact for professionals focused on raising capital for businesses in the cannabis industry. Given the history of our Adviser's management team and advisory board as operators and investors in the industry, they have established relationships with the major investment banks and business brokers in the industry. Our Adviser also focuses on sourcing investment opportunities from private equity and venture capital firms that have been active in the industry. Given our Adviser's reputation in the industry, it also receives referrals directly from executive officers of businesses in the cannabis industry.

**A dedicated staff of professionals covering investment origination and underwriting, as well as portfolio management functions.** Our Adviser has a broad team of professionals focused on every aspect of the cannabis industry and the investment lifecycle. Our Adviser has an investment team that manages and oversees our investment process from identification of investment opportunity through negotiations of final term sheet and investment in a portfolio company. The team members serving our investment management and oversight functions have significant industry and operating experience.

### **Summary Risk Factors**

Investing in our securities involves a high degree of risk. You should consider carefully the information found in "Risk Factors," including the following risks:

- Economic recessions or downturns, such as the current recession, may have a material adverse effect on our business, financial condition and results of operations, and could impair the ability of our portfolio companies to repay debt or pay interest.
- Global economic, political and market conditions, including those caused by the current public health crisis, have (and in the future, could further) adversely affect our business, results of operations and financial condition and those of our portfolio companies.
- We have no operating history and our Adviser is a newly registered investment adviser under the Advisers Act, with no history of managing BDCs and limited history of making credit investments in the nascent cannabis industry.
- You will not have the opportunity to evaluate the economic merits, transaction terms or other financial or operational data concerning our investments prior to purchasing shares of our common stock.
- Investors may lose all or part of their investment in us.
- Changes in interest rates, changes in the method for determining LIBOR and the potential replacement of LIBOR may affect our cost of capital and net investment income.
- A general increase in interest rates will likely have the effect of increasing our net investment income, which would make it easier for our Adviser to receive incentive fees.
- A significant portion of our investment portfolio will be recorded at fair value as determined in good faith by our Board of Directors and, as a result, there will be uncertainty as to the value of our portfolio investments.
- Our ability to achieve our investment objective depends on our Adviser's ability to support our investment process; if our Adviser were to lose key personnel or they were to resign, our ability to achieve our investment objective could be significantly harmed.
- Our business model depends to a significant extent upon strong referral relationships, and the inability of the personnel associated with our Adviser to maintain or develop these relationships, or the failure of these relationships to generate investment opportunities, could adversely affect our business.
- We may face increasing competition for investment opportunities, which could reduce returns and result in losses.
- A failure on our part to maintain qualification as a BDC would significantly reduce our operating flexibility.
- Regulations that will govern our operation as a BDC and RIC may affect our ability to raise, and the way in which we raise, additional capital or borrow for investment purposes, which may have a negative effect on our growth.
- Changes in laws or regulations governing our operations, including laws and regulations governing cannabis, may adversely affect our business or cause us to alter our business strategy.
- Provisions of the Maryland General Corporation Law and of our charter and bylaws could deter takeover attempts and have an adverse impact on the price of our common stock.
- We may be unable to invest a significant portion of the net proceeds from this initial public offering, or any follow-on offering of shares of our common stock, on acceptable terms within an attractive time frame.

- We are an “emerging growth company,” as defined in the Jumpstart Our Business Startups Act of 2012, or the “JOBS Act,” and we cannot be certain if the reduced disclosure requirements applicable to emerging growth companies will make our shares of common stock less attractive to investors.
- There are significant potential conflicts of interest that could adversely impact our investment returns.
- If we borrow money, the potential for loss on amounts invested in us will be magnified and may increase the risk of investing in us.
- Because we intend to distribute at least 90% of our taxable income each taxable year to our stockholders in connection with our election to be treated as a RIC, we will continue to need additional capital to finance our growth.
- We may not be able to pay you distributions, and if we are able to pay you distributions, our distributions may not grow over time and/or a portion of our distributions may be a return of capital. A return of capital generally is a return of a stockholder’s investment rather than a return of earnings or gains derived from our investment activities. As a result, a return of capital will (i) lower your tax basis in your shares and thereby increase the amount of capital gain (or decrease the amount of capital loss) realized upon a subsequent sale or redemption of such shares, and (ii) reduce the amount of funds we have for investment in portfolio companies. We have not established any limit on the extent to which we may use offering proceeds to fund distributions.
- We will be subject to corporate-level U.S. federal income tax if we are unable to obtain and maintain qualification as a RIC under Subchapter M of the Code or do not satisfy the annual distribution requirement.
- Our investments in portfolio companies may be risky, and we could lose all or part of our investments.
- We intend to invest primarily in securities that are rated below investment grade by rating agencies or that would be rated below investment grade if they were rated. Below investment grade securities, which are often referred to as “junk,” have predominantly speculative characteristics with respect to the issuer’s capacity to pay interest and return principal. They may also be illiquid and difficult to value.
- Some of the loans in which we may invest may be “covenant-lite” loans, which may have a greater risk of loss as compared to investments in or exposure to loans with a complete set of financial maintenance covenants.
- The lack of liquidity in our investments may adversely affect our business.
- Defaults by our portfolio companies would harm our operating results.
- We may not realize gains from our equity investments.
- We may expose ourselves to risks if we engage in hedging transactions.
- We have not yet identified most of the portfolio companies we will invest in using the proceeds of this offering.
- We may enter into total return swap agreements or other derivative transactions which expose us to certain risks, including market risk, liquidity risk and other risks similar to those associated with the use of leverage.
- Our ability to enter into transactions involving derivatives and financial commitment transactions may be limited, among other reasons, because of the unwillingness or inability of certain financial institutions to transact with cannabis-related companies such as ourselves.

- Shares of closed-end investment companies, including BDCs, may trade at a discount to their net asset value (“NAV”).
- The market price of our common stock may fluctuate significantly.
- Prior to our initial public offering, there will be no public market for our common stock, and we cannot assure you that the market price of shares of our common stock will not decline following our initial public offering.
- The health and wellness sector is highly regulated and competitive.
- Risks related to the cannabis and hemp industries may directly or indirectly affect us or our portfolio companies engaged in the cannabis or hemp industries.
  - o Cannabis, except for hemp, is currently illegal under U.S. federal law and in other jurisdictions, and strict enforcement of federal laws would likely result in our inability to execute our business plan.
  - o Loans to relatively new and/or small companies and companies operating in the cannabis industry generally involve significant risks.
  - o Our investment opportunities are limited by the current illegality of cannabis under U.S. federal law, and change in the laws, regulations and guidelines that impact the cannabis industry may cause adverse effects on our ability to make investments.
  - o Strict enforcement of U.S. federal laws regarding cannabis would likely result in our portfolio companies’ inability to execute a business plan in the cannabis industry, and could result in the loss of all or part of any of our loans.
  - o The nascent status of the medical and recreational cannabis industry involves unique circumstances and there can be no assurance that the industry will continue to exist or grow as currently anticipated.
  - o Any potential growth in the cannabis industry continues to be subject to new and changing state and local laws and regulations.
  - o Change in the laws, regulations and guidelines that impact our portfolio companies’ businesses may cause adverse effects on operations.
  - o Portfolio companies operating in a highly regulated business will require significant resources.
  - o Portfolio companies may become involved in regulatory or agency proceedings, investigations and audits.
  - o Research in the United States, Canada and internationally regarding the medical benefits, viability, safety, efficacy and dosing of cannabis or isolated cannabinoids remains in relatively early stages. There have been few clinical trials on the benefits of cannabis or isolated cannabinoids conducted.
  - o With respect to portfolio companies operating in the medical and adult-use cannabis markets, the illicit supply of cannabis and cannabis-based products may reduce such sales and impede such company’s ability to succeed in such markets.
  - o The cannabis industry faces significant opposition, and any negative trends may adversely affect the business operations of our portfolio companies.
  - o The cannabis industry is highly competitive and evolving.
  - o The technologies, process and formulations a portfolio company uses may face competition or become obsolete.
  - o There is uncertainty in pricing and demand for cannabis-based products.

- o Portfolio companies may have difficulty borrowing from or otherwise accessing the service of banks, which may make it difficult to sell products and services.
- o Portfolio companies may be subject to product liability claims.
- o We, portfolio companies or the cannabis industry more generally may receive unfavorable publicity or become subject to negative consumer or investor perception.
- o Third-parties with whom we do business may perceive themselves as being exposed to reputational risk by virtue of their relationship with us and may ultimately elect not to do business with us.
- o Portfolio companies may be subject to regulatory, legal or reputational risk associated with potential misuse of their products by their customers.
- o Certain events or developments in the cannabis industry more generally may impact our reputation or the reputation of our portfolio companies.
- o The cannabis industry is subject to the risks inherent in an agricultural business, including the risk of crop failure.
- o There may be a lack of access to U.S. bankruptcy protections for portfolio companies.
- o U.S. federal courts may refuse to recognize the enforceability of contracts pertaining to any business operations that are deemed illegal under U.S. federal law, including cannabis companies operating legally under state law.

**See “Risk Factors” for a more complete discussion of these and other risks you should carefully consider before deciding to invest in our securities.**

#### **Material Conflicts of Interest**

Our executive officers and directors, and certain members of our Adviser, serve or may serve as officers, directors or principals of entities that may operate in the same or a related line of business as us or as investment funds managed by our affiliates. For example, SSC presently serves as a manager to several special purpose acquisition companies, or SPACs. These investment vehicles under management were formed for the purpose of investing in specific private equity transactions, which differ from our mandate. SSC and its affiliates also manage private investment funds, and may manage other funds in the future, that have investment mandates that are similar, in whole or in part, to ours. Accordingly, they may have obligations to investors in those entities, the fulfillment of which might not be in the best interests of us or our stockholders. For example, the principals of our Adviser may face conflicts of interest in the allocation of investment opportunities to us and such other funds. The fact that our investment advisory fees are lower than those of certain other funds, could amplify this conflict of interest.

To the extent an investment opportunity is appropriate for us or any other investment fund managed by our affiliates, and co-investment is not possible, SSC will adhere to its investment allocation policy in order to determine to which entity to allocate the opportunity. Any such opportunity will be allocated first to the entity whose investment strategy is the most consistent with the opportunity being allocated, and second, if the terms of the opportunity are consistent with more than one entity’s investment strategy, on an alternating basis. Although our investment professionals will endeavor to allocate investment opportunities in a fair and equitable manner, we and our common stockholders could be adversely affected to the extent investment opportunities are allocated among us and other investment vehicles managed or sponsored by, or affiliated with, our executive officers, directors and members of our Adviser.

The 1940 Act prohibits us from making certain negotiated co-investments with affiliates, unless we receive an order from the SEC permitting us to do so. SSC and certain of its affiliates expect to submit an exemptive application to the SEC to permit us to co-invest with other funds managed by SSC or its affiliates in a manner consistent with our investment objective, positions, policies, strategies and restrictions as well as regulatory requirements and other pertinent factors. There can be no assurance that any such exemptive order will be submitted or obtained. Prior to receiving any such exemptive order from the SEC, SSC will offer us the right to participate in all investment opportunities that it determines are appropriate for us in view of our investment objective, policies and strategies and other relevant factors. These offers will be subject to the exception that, in accordance with SSC’s

investment allocation policy, we might not participate in each individual opportunity, but will, on an overall basis, be entitled to participate equitably with other entities managed by SSC and its affiliates.

SSC's policies are also designed to manage and mitigate the conflicts of interest associated with the allocation of investment opportunities if we are able to co-invest, either pursuant to SEC interpretive positions or an exemptive order, with other accounts managed by our Adviser and its affiliates. Generally, under the investment allocation policy, a portion of each opportunity that is appropriate for us and any affiliated fund, which may vary based on asset class and liquidity, among other factors, will be offered to us and such other eligible accounts, as determined by SSC. The investment allocation policy further provides that allocations among us and other eligible accounts will generally be made in accordance with SEC interpretive positions or an exemptive order. SSC seeks to treat all clients fairly and equitably in a manner consistent with its fiduciary duty to each of them; however, in some instances, especially in instances of limited liquidity, the factors may not result in pro rata allocations or may result in situations where certain accounts receive allocations where others do not. See "Certain Relationships and Related Party Transactions."

### **Corporate Information**

Our principal executive offices are located at 660 Madison Avenue, Suite 1600, New York, NY 10065 and our telephone number is (212) 905-4923. We maintain a website on the internet at [ssic.silverspikecap.com](http://ssic.silverspikecap.com). Information contained on our website is not incorporated by reference into this prospectus, and you should not consider that information to be part of this prospectus.



## THE OFFERING

<b>Common Stock Offered by Us</b>	8,928,572 shares, excluding 1,339,286 shares issuable pursuant to the over-allotment option granted to the underwriters.
<b>Common Stock to be Outstanding After this Offering</b>	8,928,958 shares, excluding 1,339,286 shares issuable pursuant to the over-allotment option granted to the underwriters.
<b>Use of Proceeds</b>	<p>We plan to use the net proceeds of this offering primarily for loans and equity investments in accordance with our investment objective and strategies described in this prospectus and for general working capital purposes. We will also pay operating expenses, including management and administrative fees, and may pay other expenses such as due diligence expenses of potential new investments, from the net proceeds of this offering. We anticipate that substantially all of the net proceeds of this offering will be used for the above purposes within three to nine months from the consummation of this offering, depending on the availability of appropriate investment opportunities consistent with our investment objective and market conditions. We cannot assure you that we will achieve our targeted investment pace. Pending such investments, we will invest the net proceeds primarily in high-quality, short-term debt securities consistent with our BDC election and our election to be taxed as a RIC. See “Use of Proceeds.”</p>
<b>Nasdaq Stock Market Symbol</b>	“SSIC”
<b>Investment Advisory Fees</b>	<p>SSC will serve as our investment adviser. We will pay SSC a fee for its services under the Investment Advisory Agreement consisting of two components: a base management fee and an incentive fee. The base management fee is calculated at an annual rate of 1.75% of our gross assets (i.e., total assets held before deduction of any liabilities), which includes investments acquired with the use of leverage and excludes cash and cash equivalents. The fact that our base management fee is payable based upon our gross assets may encourage SSC to use leverage to make additional investments. The fair value of derivatives and swaps, which will not necessarily equal the notional value of such derivatives and swaps, will be included in our calculation of gross assets.</p> <p>The incentive fee consists of two parts. The first part of the incentive fee (the “Incentive Fee on Income”) is calculated and payable quarterly in arrears and equals 20% of our “Pre-Incentive Fee Net Investment Income” for the quarter, subject to a preferred return, or “hurdle,” of 1.75% per quarter (7% annualized), and a “catch up” feature. “Pre-Incentive Fee Net Investment Income,” expressed as a rate of return on the value of our net assets at the end of the immediately preceding quarter, means interest income, dividend income and any other income (including (i) any other fees (other than fees for providing managerial assistance), such as commitment, origination, structuring, diligence and consulting fees or other fees that we</p>

receive from portfolio companies, (ii) any gain realized on the extinguishment of our own debt and (iii) any other income of any kind that we are required to distribute to our stockholders in order to maintain our RIC status) accrued during the quarter, minus our operating expenses for the quarter (including the base management fee, expenses payable under our administration agreement (the “Administration Agreement”), and any interest expense and dividends paid on any issued and outstanding preferred stock, but excluding the incentive fee). Pre-Incentive Fee Net Investment Income includes, in the case of investments with a deferred interest feature (such as original issue discount (“OID”), debt instruments with payment-in-kind (“PIK”) interest and zero coupon securities), accrued income that we have not yet received and may never receive in cash if the portfolio company is unable to satisfy its payment obligations to us. The Adviser is not obligated to return the Incentive fee on Income it receives on accrued income that is later determined to be uncollectible in cash. While we may make Incentive Fee on Income payments on income accruals that we may not collect in the future and with respect to which we do not have a “claw back” right against our Adviser, the amount of accrued income written off in any period will reduce our income in the period in which such write-off was taken and thereby may reduce such period’s Incentive Fee on Income payment. The operation of the Incentive Fee on Income for each quarter is as follows:

- No Incentive Fee on Income is payable to the Adviser in any quarter in which our Pre-Incentive Fee Net Investment Income does not exceed the “hurdle rate” of 1.75%;
- 100% of our Pre-Incentive Fee Net Investment Income, if any, that exceeds the “hurdle rate,” but is less than or equal to 2.19% in any quarter (8.76% annualized), will be payable to the Adviser. We refer to this portion of our Incentive Fee on Income as the catch up. It is intended to provide an Incentive Fee on Income of 20% on all of our Pre-Incentive Fee Net Investment Income when our Pre-Incentive Fee Net Investment Income exceeds 2.19% in any quarter; and
- For any quarter in which our Pre-Incentive Fee Net Investment Income exceeds 2.19%, the Incentive Fee on Income shall equal 20% of the amount of our Pre-Incentive Fee Net Investment Income, because the preferred return and catch up will have been achieved.

The second part of the incentive fee (the “Incentive Fee on Capital Gains”) is determined and payable in arrears as of the end of each fiscal year (or upon termination of the Investment Advisory Agreement) and equals 20% of our realized capital gains on a cumulative basis from inception through the end of the fiscal year, if any, computed net of all realized capital losses and unrealized capital depreciation on a cumulative basis, less the aggregate amount of any previously paid Incentive Fees on Capital Gains.

For purposes of computing the Incentive Fee on Income and the

Incentive Fee on Capital Gains, the calculation methodology will look through derivatives or swaps as if we owned the reference assets directly.

For our first year of operations following consummation of this offering, the Adviser has irrevocably agreed to waive the Incentive Fee on Income and the Incentive Fee on Capital Gains, without recourse against or reimbursement by the Company. The waiver of the Incentive Fee on Capital Gains applies only to realized capital gains on assets sold during our first year of operations.

See “Investment Advisory Agreement — Overview of Our Investment Adviser — Management Fee.”

### **Administration Agreement**

SSC will serve as our administrator. We will reimburse our administrator the allocable portion of overhead and other expenses incurred by our administrator in performing its obligations under the Administration Agreement, including rent and our allocable portion of the costs of compensation and related expenses of our chief financial officer (“CFO”) and chief compliance officer (“CCO”), and their respective staffs. The Company and SSC also have entered into an agreement with SS&C Technologies, Inc. (“SS&C”) to perform certain administrative functions subject to the supervision of SSC. See “Administration Agreement.”

### **Lock-up Agreements**

We, our officers and directors, and the Adviser have agreed that, for a period of 180 days from the date of this prospectus, we and they will not, without the prior written consent of the representatives of the underwriters, dispose of or hedge any shares or any securities convertible into or exchangeable for our common stock. The representatives, in their sole discretion, may release any of the securities subject to these lock-up agreements at any time without notice.

### **Distributions**

Subsequent to the completion of this offering, and to the extent that we have income available, we intend to make quarterly distributions to our stockholders beginning after our first full quarter of operations. The amount of our distributions, if any, will be determined by our Board of Directors. Any distributions to our stockholders will be declared out of assets legally available for distribution. We anticipate that our distributions will be paid from taxable earnings, including interest and capital gains generated by our investment portfolio. However, if we do not generate sufficient taxable earnings during any fiscal year, a portion of our distributions for such year may constitute a return of capital. A return of capital is a return of a portion of your original investment in shares of our common stock. As a result, a return of capital will (i) lower your tax basis in your shares and thereby increase the amount of capital gain (or decrease the amount of capital loss) realized upon a subsequent sale or redemption of such shares and (ii) reduce the amount of funds we have for investment in portfolio companies. We have not established any limit on the extent to which we may use offering proceeds to fund distributions. However, our Board of Directors, including a majority of our independent directors, will be required to determine that making return of capital distributions from our offering proceeds is in the best interests of our stockholders based upon our then-current financial condition and our expected future growth prospects. The specific tax characteristics of our distributions will be reported to stockholders after the end of each calendar year.

### **Taxation**

We intend to elect to be treated for U.S. federal income tax purposes, and intend to qualify annually to be treated, as a RIC

under Subchapter M of the Code commencing with our first taxable year after the completion of this offering. Assuming we so qualify, we generally will not pay corporate-level federal income taxes on any net ordinary income or realized net capital gains that we timely distribute to our stockholders as dividends. To obtain and maintain our RIC tax treatment, we must meet specified source-of-income and asset diversification requirements and distribute annually at least 90% of our net ordinary income and realized net short-term capital gains in excess of realized net long-term capital losses, if any. Depending on the level of taxable income earned in a tax year, we may choose to carry forward taxable income in excess of current year distributions into the next tax year and pay a 4% excise tax on such income. Any such carryover taxable income must be distributed through a dividend declared prior to filing the final tax return related to the year which generated such taxable income. See “Material U.S. Federal Income Tax Considerations.”

#### **Dividend Reinvestment Plan**

We have adopted a dividend reinvestment plan for our stockholders. The dividend reinvestment plan is an “opt out” reinvestment plan. As a result, if we declare a distribution, then stockholders’ cash distributions will be automatically reinvested in additional shares of our common stock, unless they specifically “opt out” of the dividend reinvestment plan so as to receive cash distributions. Stockholders who receive distributions in the form of our stock will be subject to the same federal, state and local tax consequences as stockholders who elect to receive their distributions in cash; however, since their cash distributions will be reinvested, such stockholders will not receive cash with which to pay any applicable taxes on reinvested distributions. See “Dividend Reinvestment Plan.”

#### **Leverage**

We expect to enter into a credit facility in the near future. The use of leverage may be considered a speculative investment technique, makes our NAV more volatile and magnifies the potential for gain and loss on amounts invested, thereby increasing the risks associated with investing in our securities. As a BDC, with certain limited exceptions, we are only allowed to borrow amounts such that our asset coverage ratio, as defined in the 1940 Act, equals at least 150% after such borrowing. We are currently targeting a debt-to-equity ratio of 0.50x (i.e., we aim to have one dollar of equity for each \$0.50 of debt outstanding). The fact that our base management fee is payable based upon our gross assets, which would include any investments acquired with the use of leverage, may encourage SSC to use leverage to make additional investments and discourage deleveraging when it would otherwise be advantageous to do so.

#### **Anti-Takeover Provisions**

Our charter and bylaws, as well as certain statutory and regulatory requirements, contain certain provisions that may have the effect of discouraging a third-party from attempting to acquire us. These anti-takeover provisions may inhibit a change in control in circumstances that could give the holders of our common stock the opportunity to realize a premium over the market price for our common stock. See “Description of Our Capital Stock.”

#### **Available Information**

After the completion of this offering, we will be required to file periodic reports, current reports, proxy statements and other information with the SEC. This information is available on the SEC’s website at [www.sec.gov](http://www.sec.gov). This information is also available free of charge by contacting us at Silver Spike Investment Corp., 660 Madison Avenue, Suite 1600, New York, NY 10065, by telephone at (212) 905-4923, or on our website at [ssic.silverspikecap.com](http://ssic.silverspikecap.com). The information on this website is not incorporated by reference into this prospectus.

## FEES AND EXPENSES

The following table is intended to assist you in understanding the costs and expenses that an investor in this offering will bear directly or indirectly. We caution you that some of the percentages indicated in the table below are estimates and may vary. Except where the context suggests otherwise, whenever this prospectus contains a reference to fees or expenses paid by “you,” “us” or “Silver Spike Investment Corp.,” or that “we” will pay fees or expenses, stockholders will indirectly bear such fees or expenses as investors in us.

### Stockholder transaction expenses:

Sales load (as a percentage of offering price)	6.00(1)
Offering expenses (as a percentage of offering price)	1.16(2)
Dividend reinvestment plan fees	—(3)
Total stockholder transaction expenses (as a percentage of offering price)	7.16%
<b>Annual expenses (as a percentage of net assets attributable to common stock):</b>	
Management fees under Investment Advisory Agreement	1.16(4)
Incentive fees under Investment Advisory Agreement	—(5)
Interest payments on borrowed funds	—(6)
Other expenses	1.24(7)
Total annual expenses	2.40%

- (1) The underwriting discounts and commissions with respect to the shares sold in this offering, which is a one-time fee, is the only sales load paid in connection with this offering. A sales load (underwriting discount and commission) of 2.00% will be paid on 3,571,429 shares sold to the Adviser. See “Control Persons and Principal Stockholders.”
- (2) Amount reflects estimated offering expenses of approximately \$1.45 million.
- (3) The expenses of administering our dividend reinvestment plan are included in “other expenses.”
- (4) Reflects the aggregate amount of base management fees we estimate will be payable under our Investment Advisory Agreement during our first year of operations following consummation of this offering, or \$1.36 million, which, as required by SEC rules, is calculated based on our projected net assets rather than our gross assets. Our base management fee under the Investment Advisory Agreement is calculated at an annual rate of 1.75% of our projected gross assets (i.e., total assets held before deduction of any liabilities), which includes investments acquired with the use of leverage and excludes cash and cash equivalents (as defined in the notes to our financial statements). See “Investment Advisory Agreement — Overview of Our Investment Adviser — Management Fee.” The fact that our base management fee is payable based upon our gross assets may encourage SSC to use leverage to make additional investments.

The “Management fees under Investment Advisory Agreement” rate in the table (the “Table Rate”) is lower than the base management fee rate under the Investment Advisory Agreement (the “Agreement Rate”) because the Table Rate is calculated as a percentage of our projected net assets, as required by SEC rules, whereas the Agreement Rate is a percentage of our gross assets (i.e., total assets held before deduction of any liabilities) excluding cash and cash equivalents. We do not anticipate using leverage to make investments, but do anticipate holding cash and cash equivalents, during our first year of operations. Accordingly, the Table Rate is calculated by dividing the estimated dollar amount of base management fees that we will pay under the Investment Advisory Agreement during our first year of operations, which reflects no fee paid on cash and cash equivalents, divided by our projected average net assets during our first year of operations, which include cash and cash equivalents. The inclusion of cash and cash equivalents in the Table Rate denominator results in the Table Rate being lower than the Agreement Rate, which reflects the division of the same numerator as for the Table Rate but by a smaller denominator because it excludes cash and cash equivalents.

- (5) Given that we have not yet commenced operations, we have not estimated the incentive fees under our Investment Advisory Agreement and have assumed this figure to be zero. Based on our current business plan, we anticipate that substantially all of the net proceeds of this offering will be invested within three to nine months depending on the availability of investment opportunities that are consistent with our investment objective and other market conditions. As a result, during our first year of operations following consummation of this offering we expect that we will not have any capital gains, but will have interest income that exceeds our quarterly hurdle rate discussed below during the second half of our first year of operations. However, for our first year of operations following consummation of this offering, the Adviser has irrevocably agreed to waive the Incentive Fee on Income and the Incentive Fee on Capital Gains, without recourse against or reimbursement by the Company. The waiver of the Incentive Fee on Capital Gains applies only to realized capital gains on assets sold during our first year of operations.

The incentive fee consists of two parts. The first part of the incentive fee, the Incentive Fee on Income, which is payable quarterly in arrears, is equal to 20% of the excess, if any, of our “Pre-Incentive Fee Net Investment Income” that exceeds a 1.75% quarterly (7% annualized) hurdle rate, subject to a “catch up” provision measured at the end of each quarter. The Incentive Fee on Income is computed and paid on income that may include interest that is accrued but not yet received, and may never be received, in cash. The second part of the incentive fee, the Incentive Fee on Capital Gains, payable at the end of each fiscal year (or upon termination of the Investment Advisory Agreement) in arrears, equals 20% of cumulative realized capital gains from inception to the end of each fiscal year, less cumulative realized capital losses and unrealized capital depreciation from inception to the end of each fiscal year, less the aggregate amount of any previously paid Incentive Fees on Capital Gains for prior periods. See “Investment Advisory Agreement — Overview of Our Investment Adviser — Management Fee.”

- (6) We do not currently anticipate incurring indebtedness on our portfolio or paying any interest during the first year following completion of this offering. We also do not currently anticipate issuing any preferred stock.
- (7) “Other expenses” are based on estimated amounts for our first full year of operations and include organizational expenses of approximately \$500,000.

**Example**

The following example demonstrates the projected dollar amount of total cumulative expenses that would be incurred over various periods with respect to a hypothetical \$1,000 investment in our common stock assuming (1) a 6.00% sales load (underwriting discounts and commissions) and offering expenses totaling 1.16%, (2) total estimated annual expenses of 2.40% of net assets and (3) a 5% annual return.

	<u>1 Year</u>	<u>3 Years</u>	<u>5 Years</u>	<u>10 Years</u>
You would pay the following expenses on a \$1,000 investment, assuming a 5% annual return	\$94	\$142	\$192	\$329

The foregoing example is intended to assist you in understanding the various costs and expenses that an investor in our common stock will bear directly or indirectly. While the example assumes, as required by the SEC, a 5% annual return, our performance will vary and may result in a return greater or less than 5%. The incentive fee under the Investment Advisory Agreement, which, assuming a 5% annual return, would either not be payable or would have an immaterial impact on the expense amounts shown above, is not included in the example. If we achieve sufficient returns on our investments to trigger an incentive fee of a material amount, our expenses, and returns to our investors, would be higher. In addition, while the example assumes reinvestment of all dividends and distributions at NAV, under certain circumstances, reinvestment of dividends and other distributions under our dividend reinvestment plan may occur at a price per share that differs from NAV. See “Dividend Reinvestment Plan” for additional information regarding our dividend reinvestment plan.

**This example should not be considered a representation of our future expenses, and actual expenses (including the cost of debt, if any, and other expenses) may be greater or less than those shown.**

## RISK FACTORS

*Investing in our common stock involves a number of significant risks. In addition to the other information contained in this prospectus, you should consider carefully the following information before making an investment in our common stock. The risks set out below are not the only risks we face; however, they discuss the presently known principal risks of investing in our common stock. Additional risks and uncertainties not presently known to us might also impair our operations and performance. If any of the following events occur, our business, financial condition and results of operations could be materially and adversely affected. In such case, our NAV and the trading price of our common stock could decline, and you may lose part or all of your investment. The risk factors described below are the principal risk factors associated with an investment in our common stock, as well as those factors generally associated with an investment company with investment objectives, investment policies, capital structure or trading markets similar to ours.*

### **Risks Relating to Economic Conditions**

***Economic recessions or downturns, such as the current recession, may have a material adverse effect on our business, financial condition and results of operations, and could impair the ability of our portfolio companies to repay debt or pay interest.***

Economic recessions or downturns may result in a prolonged period of market illiquidity which could have a material adverse effect on our business, financial condition and results of operations. Unfavorable economic conditions also could increase our funding costs, limit our access to the capital markets or result in a decision by lenders not to extend credit to us. These events could limit our investment originations, limit our ability to grow and negatively impact our operating results. In addition, uncertainty with regard to economic recovery from recessions or downturns could also have a negative impact on our business, financial condition and results of operations.

When recessionary conditions exist, such as the current recession, the financial results of middle-market companies, like those in which we invest, typically experience deterioration, which could ultimately lead to difficulty in meeting debt service requirements and an increase in defaults. Additionally, there can be reduced demand for certain of our portfolio companies' products and services and/or other economic consequences, such as decreased margins or extended payment terms. Further, adverse economic conditions may decrease the value of collateral securing some of our loans and the value of our equity investments. Such conditions may require us to modify the payment terms of our investments, including changes in PIK interest provisions and/or cash interest rates. The performance of certain portfolio companies in the future may be negatively impacted by these economic or other conditions, which may result in our receipt of reduced interest income from our portfolio companies and/or realized and unrealized losses related to our investments, and, in turn, may adversely affect distributable income and have a material adverse effect on our results of operations.

***Global economic, political and market conditions, including downgrades of the U.S. credit rating, may adversely affect our business, results of operations and financial condition.***

The current global financial market situation, as well as various social and political tensions in the United States and around the world, may contribute to increased market volatility, may have long-term effects on the United States and worldwide financial markets and may cause economic uncertainties or deterioration in the United States and worldwide. The impact of downgrades by rating agencies to the U.S. government's sovereign credit rating or its perceived creditworthiness as well as potential government shutdowns and uncertainty surrounding transfers of power could adversely affect the U.S. and global financial markets and economic conditions. Since 2010, several European Union, or EU, countries have faced budget issues, some of which may have negative long-term effects for the economies of those countries and other EU countries. There is concern about national-level support for the Euro and the accompanying coordination of fiscal and wage policy among European Economic and Monetary Union member countries. In addition, the fiscal policy of foreign nations, such as Russia and China, may have a severe impact on the worldwide and U.S. financial markets. The decision made in the United Kingdom referendum to leave the EU (the so-called "Brexit") has led to volatility in global financial markets and may lead to weakening in consumer, corporate and financial confidence in the United Kingdom and Europe. While the United Kingdom commenced its withdrawal from the EU on January 31, 2020, the transition and its surrounding negotiations are

ongoing, which creates uncertainty, which may lead to continued volatility. Additionally, trade wars and volatility in the U.S. repo market, the U.S. high-yield bond markets, the Chinese stock markets and global markets for commodities may affect other financial markets worldwide. In addition, while recent government stimulus measures worldwide have reduced volatility in the financial markets, volatility may return as such measures are phased out, and the long-term impacts of such stimulus on fiscal policy and inflation remain unknown. We cannot predict the effects of these or similar events in the future on the U.S. and global economies and securities markets or on our investments. We monitor developments in economic, political and market conditions and seek to manage our investments in a manner consistent with achieving our investment objective, but there can be no assurance that we will be successful in doing so.

***Capital markets may experience periods of disruption and instability. Such market conditions may materially and adversely affect debt and equity capital markets in the United States and abroad, which may have a negative impact on our business and operations.***

From time-to-time, capital markets may experience periods of disruption and instability. During such periods of market disruption and instability, we and other companies in the financial services sector may have limited access, if available, to alternative markets for debt and equity capital. Equity capital may be difficult to raise because, subject to some limited exceptions which will apply to us as a BDC, we will generally not be able to issue additional shares of our common stock at a price less than net asset value without first obtaining approval for such issuance from our stockholders and our independent directors. In addition, our ability to incur indebtedness (including by issuing preferred stock) is limited by applicable regulations such that our asset coverage, as defined in the 1940 Act, must equal at least 150% immediately after each time we incur indebtedness. We are currently targeting a debt-to-equity ratio of 0.50x (i.e., we aim to have one dollar of equity for each \$0.50 of debt outstanding). The debt capital that will be available, if at all, may be at a higher cost and on less favorable terms and conditions in the future. Any inability to raise capital could have a negative effect on our business, financial condition and results of operations.

Given the extreme volatility and dislocation in the capital markets over the past several years, many BDCs have faced, and may in the future face, a challenging environment in which to raise or access capital. In addition, significant changes in the capital markets, including the extreme volatility and disruption over the past several years, has had, and may in the future have, a negative effect on the valuations of our investments and on the potential for liquidity events involving these investments. While most of our investments are not publicly traded, applicable accounting standards require us to assume as part of our valuation process that our investments are sold in a principal market to market participants (even if we plan on holding an investment through its maturity). As a result, volatility in the capital markets can adversely affect our investment valuations. Further, the illiquidity of our investments may make it difficult for us to sell such investments if required and to value such investments. Our use of leverage will amplify these risks, and we may be forced to liquidate our investments at inopportune times or prices to repay debt. Consequently, we may realize significantly less than the value at which we carry our investments. An inability to raise capital, and any required sale of our investments for liquidity purposes, could have a material adverse impact on our business, financial condition or results of operations. In addition, a prolonged period of market illiquidity may cause us to reduce the volume of loans and debt securities we originate and/or fund and adversely affect the value of our portfolio investments, which could have a material and adverse effect on our business, financial condition, results of operations and cash flows.

***There is uncertainty surrounding potential legal, regulatory and policy changes by new presidential administrations in the United States that may directly affect financial institutions and the global economy.***

As a result of the United States presidential election, which occurred on November 3, 2020, as of January 2021, the Democratic Party controls the executive branch of government. The Democratic Party also currently controls both the Senate and House of Representatives portions of the legislative branch of government. Changes in federal policy, including tax policies, and at regulatory agencies, occur over time through policy and personnel changes following elections, which lead to changes involving the level of oversight and focus on the financial services industry or the tax rates paid by corporate entities. The nature, timing and economic and political effects of potential changes to the current legal and regulatory framework affecting financial institutions remain highly uncertain. Uncertainty surrounding future changes may adversely affect our operating environment and therefore our business, financial condition, results of operations and growth prospects.



## Risks Relating to the COVID-19 Pandemic

***Global economic, political and market conditions caused by the current public health crisis have (and in the future, could further) adversely affect our business, results of operations and financial condition and those of our portfolio companies.***

A novel strain of coronavirus initially appeared in late 2019 and rapidly spread globally, including to the United States. In an attempt to slow the spread of the coronavirus, governments around the world, including the United States, placed restrictions on travel, issued “stay at home” orders and ordered the temporary closure of certain businesses, such as factories and retail stores. Such restrictions and closures impacted supply chains, consumer demand and/or the operations of many businesses. As jurisdictions around the United States and the world continue to experience surges in cases of COVID-19 and governments consider pausing the lifting of or re-imposing restrictions, there is considerable uncertainty surrounding the full economic impact of the coronavirus pandemic and the long-term effects on the U.S. and global financial markets.

Any disruptions in the capital markets, as a result of the COVID-19 pandemic or otherwise, may increase the spread between the yields realized on risk-free and higher risk securities and can result in illiquidity in parts of the capital markets, significant write-offs in the financial sector and re-pricing of credit risk in the broadly syndicated market. These and any other unfavorable economic conditions could increase our funding costs, limit our access to the capital markets or result in a decision by lenders not to extend credit to us. In addition, our success depends in substantial part on the management, skill and acumen of our Adviser, whose operations may be adversely impacted, including through quarantine measures and travel restrictions imposed on its investment professionals or service providers, or any related health issues of such investment professionals or service providers.

In addition, the restrictions and closures and related market conditions resulted in, and if re-imposed in the future, could further result in certain portfolio companies halting or significantly curtailing operations and negative impacts to the supply chains of certain of our portfolio companies. The financial results of middle-market companies, like those in which we invest, experienced deterioration, which could ultimately lead to difficulty in meeting debt service requirements and an increase in defaults, and further deterioration will further depress the outlook for those companies. Further, adverse economic conditions may in the future decrease the value of collateral securing some of our loans and the value of our equity investments. Such conditions may in the future require us to modify the payment terms of our investments, including changes in PIK interest provisions and/or cash interest rates. The performance of certain of our portfolio companies in the future may be negatively impacted by these economic or other conditions, which can result in our receipt of reduced interest income from our portfolio companies and/or realized and unrealized losses related to our investments, and, in turn, may adversely affect distributable income and have a material adverse effect on our results of operations. In addition, as governments ease COVID-19 related restrictions, certain of our portfolio companies may experience increased health and safety expenses, payroll costs and other operating expenses.

As the potential impact of the coronavirus remains difficult to predict, the extent to which the coronavirus could negatively affect our and our portfolio companies’ operating results or the duration or reoccurrence of any potential business or supply-chain disruption is uncertain. Any potential impact to our results of operations will depend to a large extent on future developments regarding the duration and severity of the coronavirus and the actions taken by governments (including stimulus measures or the lack thereof) and their citizens to contain the coronavirus or treat its impact, all of which are beyond our control.

***The COVID-19 pandemic has caused severe disruptions in the global economy and has disrupted financial activity in the areas in which we or our portfolio companies operate.***

The COVID-19 pandemic has resulted in widespread outbreaks of illness and numerous deaths, adversely impacted global and U.S. commercial activity and contributed to significant volatility in certain equity and debt markets. The global impact of the outbreak is rapidly evolving, and many countries and localities, including the U.S. and states in which our portfolio companies operate, have reacted by instituting quarantines, prohibitions on travel and the closure of offices, businesses, schools, retail stores and other public venues. Businesses are also implementing similar precautionary measures. Such measures, as well as the general uncertainty surrounding the dangers and impact of the COVID-19 pandemic, have created significant disruption in supply chains and economic activity and are having a particularly adverse impact on transportation, hospitality, tourism, entertainment and other

industries, including industries in which certain of our portfolio companies operate. The impact of the COVID-19 pandemic has led to significant volatility and declines in the global public equity markets and it is uncertain how long this volatility will continue. As the COVID-19 pandemic continues to spread, the potential impacts, including a global, regional or other economic recession, are increasingly uncertain and difficult to assess.

While countries have relaxed their public health restrictions relative to those imposed during the spring and summer of 2020, they have been forced to re-introduce such restrictions and business shutdowns at various points in time due to surges in the reported number of cases, hospitalizations and deaths related to the COVID-19 pandemic. Health advisors warn that recurring COVID-19 outbreaks will continue if reopening is pursued too soon or in the wrong manner, which may lead to the re-introduction or continuation of certain public health restrictions (such as instituting quarantines, prohibitions on travel and the closure of offices, businesses, schools, retail stores and other public venues). Additionally, as of December 2021, travelers from certain countries were not allowed to visit Australia or the majority of countries in Europe and Asia. These continued travel restrictions may prolong the global economic downturn. In addition, although the Federal Food and Drug Administration authorized vaccines produced by Pfizer-BioNTech, Moderna, and Johnson & Johnson for emergency use starting in December 2020, and over 70% of U.S. adults have been fully vaccinated as of November 2021, it remains unclear how quickly the vaccines will be distributed globally or when “herd immunity” will be achieved and the restrictions that were imposed to slow the spread of the virus will be lifted entirely. The delay in distributing the vaccines could lead people to continue to self-isolate and not participate in the economy at pre-pandemic levels for a prolonged period of time. Even after the COVID-19 pandemic subsides, the U.S. economy and most other major global economies may continue to experience a recession, and we anticipate our business and operations could be materially adversely affected by a prolonged recession in the United States and other major markets.

### **Risks Relating to Our Business and Structure**

***We have no operating history and our Adviser is a newly registered investment adviser under the Advisers Act, with no history of managing BDCs and limited history of making credit investments in the nascent cannabis industry.***

We were formed in January 2021 and have not yet commenced operations. As a result of a lack of operating history, we are subject to many of the business risks and uncertainties associated with recently formed businesses, including the risk that we will not achieve our investment objective and that the value of your investment could decline substantially. Our team also has limited history working together in making credit investments.

Additionally, our Adviser is a newly registered investment adviser under the Advisers Act, with no history of managing BDCs. The 1940 Act imposes numerous constraints on the operations of BDCs that do not apply to the other types of investment vehicles. For example, under the 1940 Act, BDCs are generally required to invest at least 70% of their total assets primarily in securities of qualifying U.S. private or thinly traded companies. The failure to comply with these provisions in a timely manner could prevent us from qualifying as a BDC, which could be material. The Adviser’s lack of experience in managing a portfolio of assets under such constraints may hinder our ability to take advantage of attractive investment opportunities and, as a result, achieve our investment objective.

***You will not have the opportunity to evaluate the economic merits, transaction terms or other financial or operational data concerning our investments prior to purchasing shares of our common stock.***

You will not have the opportunity to evaluate the economic merits, transaction terms or other financial or operational data concerning our investments prior to purchasing shares of our common stock. You must rely on our investment professionals and the Board of Directors to implement our investment policies, to evaluate our investment opportunities and to structure the terms of our investments. Because investors are not able to evaluate our investments in advance of purchasing shares of our common stock, an investment in shares of our common stock may entail more risk than other types of offerings. This additional risk may hinder your ability to achieve your own personal investment objective related to portfolio diversification, risk-adjusted investment returns and other objectives.

***Changes in interest rates, changes in the method for determining LIBOR and the potential replacement of LIBOR may affect our cost of capital and net investment income.***

General interest rate fluctuations and changes in credit spreads on floating rate loans may have a substantial negative impact on our investments and investment opportunities and, accordingly, may have a material adverse effect on our rate of return on invested capital, our net investment income, our NAV and the market price of our common stock. A substantial portion of our debt investments will have variable interest rates that reset periodically based on benchmarks such as LIBOR (or successors thereto) and the prime rate. An increase in interest rates may make it more difficult for our portfolio companies to service their obligations under the debt investments that we will hold and increase defaults even where our investment income increases. Rising interest rates could also cause borrowers to shift cash from other productive uses to the payment of interest, which may have a material adverse effect on their business and operations and could, over time, lead to increased defaults. Additionally, as interest rates increase and the corresponding risk of a default by borrowers increases, the liquidity of higher interest rate loans may decrease as fewer investors may be willing to purchase such loans in the secondary market in light of the increased risk of a default by the borrower and the heightened risk of a loss of an investment in such loans. Decreases in credit spreads on debt that pays a floating rate of return would have an impact on the income generation of our floating rate assets. Trading prices for debt that pays a fixed rate of return tend to fall as interest rates rise. Trading prices tend to fluctuate more for fixed rate securities that have longer maturities.

Conversely, if interest rates decline, borrowers may refinance their loans at lower interest rates, which could shorten the average life of the loans and reduce the associated returns on the investment, as well as require our Adviser and the investment professionals to incur management time and expense to re-deploy such proceeds, including on terms that may not be as favorable as our existing loans.

In addition, because we may borrow to fund our investments, a portion of our net investment income is dependent upon the difference between the interest rate at which we borrow funds and the interest rate at which we invest these funds. Portions of our investment portfolio and our borrowings may have floating rate components. As a result, a significant change in market interest rates could have a material adverse effect on our net investment income. In periods of rising interest rates, our cost of funds could increase, which would reduce our net investment income. We may hedge against interest rate fluctuations by using standard hedging instruments such as interest rate swap agreements, futures, options and forward contracts, subject to applicable legal requirements, including all necessary registrations (or exemptions from registration) with the Commodity Futures Trading Commission (“CFTC”). These activities may limit our ability to participate in the benefits of lower interest rates with respect to the hedged borrowings. Adverse developments resulting from changes in interest rates or hedging transactions could have a material adverse effect on our business, financial condition and results of operations.

As a result of concerns about the accuracy of the calculation of LIBOR, a number of British Bankers’ Association, or BBA, member banks entered into settlements with certain regulators and law enforcement agencies with respect to the alleged manipulation of LIBOR. Actions by the BBA, regulators or law enforcement agencies as a result of these or future events, may result in changes to the manner in which LIBOR is determined or the establishment of alternative reference rates. Potential changes, or uncertainty related to such potential changes may adversely affect the market for LIBOR-based securities, including investments in any LIBOR-indexed, floating-rate debt securities and our borrowings.

In July 2017, the head of the United Kingdom Financial Conduct Authority (the “FCA”) announced the desire to phase out the use of LIBOR by the end of 2021. On March 5, 2021, the FCA announced that all LIBOR settings will either cease to be provided by any administrator or no longer be representative (a) immediately after December 31, 2021, in the case of the 1-week and 2-month U.S. dollar settings, and (b) immediately after June 30, 2023, in the case of the remaining U.S. dollar settings. The U.S. Federal Reserve, in conjunction with the Alternative Reference Rates Committee, a steering committee composed of large U.S. financial institutions, is considering replacing U.S.-dollar LIBOR with the Secured Overnight Financing Rate, or SOFR, a new index calculated by short-term repurchase agreements, backed by Treasury securities. Although there have been a few issuances utilizing SOFR or the Sterling Over Night Index Average, an alternative reference rate that is based on transactions, it is unknown whether these alternative reference rates will attain market acceptance as replacements for LIBOR. Any transition away from LIBOR to alternative reference rates is complex and could have a material adverse effect on our business, financial condition and results of operations, including as a result of any changes in the pricing of our investments, changes to the documentation for certain of our investments and the pace of such changes, disputes and other actions regarding the interpretation of current and prospective loan documentation or modifications to processes and systems.

***A general increase in interest rates will likely have the effect of increasing our net investment income, which would make it easier for our Adviser to receive Incentive Fees on Income.***

Any general increase in interest rates would likely have the effect of increasing the interest rate that we receive on many of our debt investments. Accordingly, a general increase in interest rates may make it easier for our Adviser to meet the quarterly hurdle rate for payment of Incentive Fees on Income under the Investment Advisory Agreement and may result in a substantial increase in the amount of the Incentive Fees on Income payable to our Adviser.

***A significant portion of our investment portfolio will be recorded at fair value as determined in good faith by our Board of Directors and, as a result, there will be uncertainty as to the value of our portfolio investments.***

Under the 1940 Act, we are required to carry our portfolio investments at market value or, if there is no readily available market value, at fair value as determined in good faith by our Board of Directors. Typically, there is not a public market for the securities of the privately held companies in which we will invest. As a result, we value these securities quarterly at fair value as determined in good faith by our Board of Directors. The fair value of such securities may change, potentially materially, between the date of the fair value determination by our Board of Directors and the release of the financial results for the corresponding period or the next date at which fair value is determined.

Certain factors that may be considered in determining the fair value of our investments include the nature and realizable value of any collateral, the portfolio company's earnings and its ability to make payments on its indebtedness, the markets in which the portfolio company does business, comparison to comparable publicly traded companies, discounted cash flow and other relevant factors. Because such valuations, and particularly valuations of private securities and private companies, are inherently uncertain, may fluctuate over short periods of time and may be based on estimates, our determinations of fair value may differ materially from the values that would have been used if a ready market for these securities existed. In addition, any investments that include OID or PIK interest may have unreliable valuations because their continuing accruals require ongoing judgments about the collectability of their deferred payments and the value of their underlying collateral. Due to these uncertainties, our fair value determinations may cause our NAV on a given date to materially understate or overstate the value that we may ultimately realize upon the sale of one or more of our investments. As a result, investors purchasing our common stock based on an overstated NAV would pay a higher price than the realizable value of our investments might warrant.

In addition, the participation of the investment professionals in the valuation process, and the indirect pecuniary interest of Scott Gordon, our Chief Executive Officer and an interested member of our Board of Directors, and Gregory Gentile, our Chief Financial Officer and Chief Compliance Officer, in the Adviser could result in a conflict of interest as the management fee payable to our Adviser is based on our gross assets and the Incentive Fees on Capital Gains payable to the Adviser will be based, in part, on unrealized losses.

***Our ability to achieve our investment objective will depend on our Adviser's ability to support our investment process; if our Adviser were to lose key personnel or they were to resign, our ability to achieve our investment objective could be significantly harmed.***

We depend on the investment expertise, skill and network of business contacts of the senior personnel of our Adviser. Our Adviser evaluates, negotiates, structures, executes, monitors and services our investments. Key personnel of our Adviser have departed in the past and current key personnel could depart at any time. Our Adviser's capabilities in structuring the investment process, providing competent, attentive and efficient services to us, and facilitating access to financing on acceptable terms depend on the employment of investment professionals in adequate number and of adequate sophistication to match the corresponding flow of transactions. The departure of key personnel or of a significant number of the investment professionals or partners of our Adviser could have a material adverse effect on our ability to achieve our investment objective. Our Adviser may need to hire, train,

supervise and manage new investment professionals to participate in our investment selection and monitoring process and may not be able to find investment professionals in a timely manner or at all.

In addition, without payment of any penalty, the Adviser may generally terminate the Investment Advisory Agreement upon 60 days' written notice. If we are unable to quickly find a new investment adviser or hire internal management with similar expertise and ability to provide the same or equivalent services on acceptable terms, our operations are likely to experience a disruption and our ability to achieve our investment objective and pay distributions would likely be materially and adversely affected.

***Our business model depends to a significant extent upon strong referral relationships, and the inability of the personnel associated with our Adviser to maintain or develop these relationships, or the failure of these relationships to generate investment opportunities, could adversely affect our business.***

We expect that personnel associated with our Adviser will maintain and develop their relationships with intermediaries, banks and other sources, and we will rely to a significant extent upon these relationships to provide us with potential investment opportunities. If these individuals fail to maintain their existing relationships or develop new relationships with other sources of investment opportunities, we may not be able to grow or maintain our investment portfolio. In addition, individuals with whom the personnel associated with our Adviser have relationships are not obligated to provide us with investment opportunities, and, therefore, there is no assurance that such relationships will generate investment opportunities for us. The failure of the personnel associated with our Adviser to maintain existing relationships, grow new relationships, or for those relationships to generate investment opportunities could have an adverse effect on our business, financial condition and results of operations.

***We may face increasing competition for investment opportunities, which could reduce returns and result in losses.***

We compete for investments with other BDCs, public and private funds (including hedge funds, mezzanine funds and CLOs) and private equity funds (to the extent they provide an alternative form of financing), as well as traditional financial services companies such as commercial and investment banks, commercial financing companies and other sources of financing. Many of our competitors are substantially larger and have considerably greater financial, technical and marketing resources than we do. For example, some competitors may have a lower cost of capital and access to funding sources that are not available to us. In addition, some of our competitors may have higher risk tolerances or different risk assessments than we have. These characteristics could allow our competitors to consider a wider variety of investments, establish more relationships and offer better pricing and more flexible structuring than we are able to do. We may lose investment opportunities if we do not match our competitors' pricing, terms and structure. If we are forced to match our competitors' pricing, terms and structure, we may not be able to achieve acceptable returns on our investments or may bear substantial risk of capital loss. A significant increase in the number and/or the size of our competitors in this target market could force us to accept less attractive investment terms. Furthermore, many of our competitors are not subject to, the regulatory restrictions that the 1940 Act imposes on us as a BDC.

***Our ability to enter into transactions with our affiliates is restricted.***

We are prohibited under the 1940 Act from participating in certain transactions with certain of our affiliates without the prior approval of our independent directors and, in some cases, the SEC. Any person that owns, directly or indirectly, 5% or more of our outstanding voting securities is our affiliate for purposes of the 1940 Act, and we are generally prohibited from buying or selling any securities (other than our securities) from or to such affiliate, absent the prior approval of our independent directors. The 1940 Act also prohibits certain "joint" transactions with certain of our affiliates, which could include investments in the same portfolio company (whether at the same or different times), without prior approval of our independent directors and, in some cases, the SEC. If a person acquires more than 25% of our voting securities, we will be prohibited from buying or selling any security (other than any security of which we are the issuer) from or to such person or certain of that person's affiliates, or entering into prohibited joint transactions with such person, absent the prior approval of the SEC. Similar restrictions limit our ability to transact business with our officers or directors or their affiliates. As a result of these restrictions, except in situations described below, we may be prohibited from buying or selling any security (other than any security of which we are the issuer) from or to any portfolio company of a private fund managed by our Adviser without the

prior approval of the SEC, which may limit the scope of investment opportunities that would otherwise be available to us.

We may also invest alongside funds managed by our Adviser and its affiliates in certain circumstances where doing so is consistent with applicable law and SEC staff interpretations. For example, we may invest alongside such accounts consistent with guidance promulgated by the staff of the SEC permitting us and such other accounts to purchase interests in a single class of privately placed securities so long as certain conditions are met, including that our Adviser, acting on our behalf and on behalf of other clients, negotiates no term other than price. See “Certain Relationships and Related Party Transactions.”

***A failure on our part to maintain qualification as a BDC would significantly reduce our operating flexibility.***

If we fail to continuously qualify as a BDC, we might be subject to regulation as a registered closed-end investment company under the 1940 Act, which would significantly decrease our operating flexibility. In addition, failure to comply with the requirements imposed on Business Development Companies by the 1940 Act could cause the SEC to bring an enforcement action against us. For additional information on the qualification requirements of a BDC, see the disclosure under the caption “Regulation — Business Development Company Regulations.”

***Regulations that will govern our operation as a BDC and RIC may affect our ability to raise, and the way in which we raise, additional capital or borrow for investment purposes, which may have a negative effect on our growth.***

In order to qualify for the tax benefits available to RICs and to minimize corporate-level U.S. federal income taxes, we intend to distribute to our stockholders at least 90% of our taxable income each taxable year, except that we may retain certain net capital gains for investment, and treat such amounts as deemed distributions to our stockholders. If we elect to treat any amounts as deemed distributions, we would be subject to income taxes at the corporate rate on such deemed distributions on behalf of our stockholders.

As a BDC, we are required to invest at least 70% of our total assets primarily in securities of U.S. private or thinly traded public companies, cash, cash equivalents, U.S. government securities and other high-quality debt instruments that mature in one year or less from the date of investment.

As a BDC, we may issue “senior securities,” including borrowing money from banks or other financial institutions only in amounts such that our asset coverage, as defined in the 1940 Act, equals at least 150% after such incurrence or issuance. We are currently targeting a debt-to-equity ratio of 0.50x (i.e., we aim to have one dollar of equity for each \$0.50 of debt outstanding). These requirements limit the amount that we may borrow, may unfavorably limit our investment opportunities and may reduce our ability in comparison to other companies to profit from favorable spreads between the rates at which we can borrow and the rates at which we can lend. If the value of our assets declines, we may be unable to satisfy the asset coverage test, which could prohibit us from paying distributions and could prevent us from being subject to tax as a RIC. If we cannot satisfy the asset coverage test, we may be required to sell a portion of our investments and, depending on the nature of our debt financing, repay a portion of our indebtedness at a time when such sales may be disadvantageous.

Because we will continue to need capital to grow our investment portfolio, these limitations may prevent us from incurring debt and require us to raise additional equity at a time when it may be disadvantageous to do so. As a result of these requirements we need to periodically access the capital markets to raise cash to fund new investments at a more frequent pace than our privately owned competitors. We generally are not able to issue or sell our common stock at a price below NAV per share, which may be a disadvantage as compared with other public companies or private investment funds. When our common stock trades at a discount to NAV, this restriction could adversely affect our ability to raise capital. We may, however, sell our common stock, or warrants, options or rights to acquire our common stock, at a price below the current NAV of the common stock if our Board of Directors and independent directors determine that such sale is in our best interests and the best interests of our stockholders, and our stockholders as well as those stockholders that are not affiliated with us approve such sale in accordance with the requirements of the 1940 Act. In any such case, the price at which our securities are to be issued and sold may not be less than a price that, in the determination of our Board of Directors, closely approximates the market value of such securities (less any underwriting commission or discount). We cannot assure you that equity financing will be available to us on favorable terms, or at all. If additional funds are not available to us, we could be forced to curtail or cease new investment activities.

We also may make rights offerings to our stockholders at prices less than NAV, subject to applicable requirements of the 1940 Act. If we raise additional funds by issuing more shares of our common stock or issuing senior securities convertible into, or exchangeable for, our common stock, the percentage ownership of our stockholders may decline at that time and such stockholders may experience dilution. Moreover, we can offer no assurance that we will be able to issue and sell additional equity securities in the future, on terms favorable to us or at all.

In addition, we may in the future seek to securitize our portfolio securities to generate cash for funding new investments. To securitize loans, we would likely create a wholly owned subsidiary and contribute a pool of loans to the subsidiary. We would then sell interests in the subsidiary on a non-recourse basis to purchasers and we would retain all or a portion of the equity in the subsidiary. An inability to successfully securitize our loan portfolio could limit our ability to grow our business or fully execute our business strategy and may decrease our earnings, if any. The securitization market is subject to changing market conditions and we may not be able to access this market when we would otherwise deem appropriate. Moreover, the successful securitization of our portfolio might expose us to losses as the residual investments in which we do not sell interests will tend to be those that are riskier and more apt to generate losses. The 1940 Act also may impose restrictions on the structure of any securitization.

***The Incentive Fee on Capital Gains may be effectively greater than 20%.***

As a result of the operation of the cumulative method of calculating the Incentive Fee on Capital Gains that we will pay to our Adviser, the cumulative aggregate capital gains fee that will be received by our Adviser could be effectively greater than 20%, depending on the timing and extent of subsequent net realized capital losses or net unrealized depreciation. For additional information on this calculation, see the disclosure in footnote 2 to Example 2 under the caption “Investment Advisory Agreement — Management Fee — Incentive Fee.” We cannot predict whether, or to what extent, this anticipated payment calculation would affect your investment in shares of our common stock.

***Our Board of Directors may change our investment objective, operating policies and strategies without prior notice or stockholder approval, the effects of which may be adverse.***

Our Board of Directors has the authority to modify or waive our current investment objective, operating policies and strategies without prior notice and without stockholder approval. We cannot predict the effect any changes to our current investment objective, operating policies and strategies would have on our business, NAV, operating results and value of our stock. However, the effects might be adverse, which could negatively impact our ability to pay you distributions and cause you to lose part or all of your investment.

***Changes in laws or regulations governing our operations, including laws and regulations governing cannabis, may adversely affect our business or cause us to alter our business strategy.***

We and our anticipated portfolio companies will be subject to regulation at the local, state and federal level, including laws and regulations governing cannabis by state and federal governments. See “— Risks Related to the Cannabis and Hemp Industries” below. New legislation may be enacted or new interpretations, rulings or regulations could be adopted, including those governing the types of investments we may be permitted to make or that impose limits on our ability to pledge a significant amount of our assets to secure loans or that restrict the operations of a portfolio company, any of which could harm us and our stockholders and the value of our investments, potentially with retroactive effect. For example, certain provisions of the Dodd-Frank Act, which influences many aspects of the financial services industry, have been amended or repealed and the Code has been substantially amended and reformed. Any amendment or repeal of legislation, or changes in regulations or regulatory interpretations thereof, could create uncertainty in the near term, which could have a material adverse impact on our business, financial condition and results of operations.

Additionally, any changes to the laws and regulations governing our operations relating to permitted investments may cause us to alter our investment strategy in order to avail ourselves of new or different opportunities. Such changes could result in material differences to the strategies and plans set forth herein and may result in our investment focus shifting from the areas of expertise of our Adviser to other types of investments in which our Adviser may have less expertise or little or no experience. Thus, any such changes, if they occur, could have a material adverse effect on our results of operations and the value of your investment.

***Provisions of the Maryland General Corporation Law and of our charter and bylaws could deter takeover attempts and have an adverse impact on the price of our common stock.***

The Maryland General Corporation Law (“MGCL”), our charter and our bylaws contain provisions that may discourage, delay or make more difficult a change in control or the removal of our directors. Under our charter, certain charter amendments and certain transactions such as a merger, conversion of the Company to an open-end company, liquidation, or other transactions that may result in a change of control of us, must be approved by stockholders entitled to cast at least 80% of the votes entitled to be cast on such matter, unless the matter has been approved by at least two-thirds of our “continuing directors,” as defined in our charter. Also, we are subject to Subtitle 6 of Title 3 of the MGCL, the Maryland Business Combination Act, subject to any applicable requirements of the 1940 Act. Our Board of Directors has adopted a resolution exempting from the Maryland Business Combination Act any business combination between us and any other person, subject to prior approval of such business combination by our Board of Directors, including approval by a majority of our directors who are not “interested persons,” as defined in the 1940 Act. If the resolution exempting business combinations is repealed or our Board of Directors does not approve a business combination, the Maryland Business Combination Act may discourage third parties from trying to acquire control of us and increase the difficulty of consummating such a transaction. We are subject to Subtitle 7 of Title 3 of the MGCL, the Maryland Control Share Acquisition Act. The Maryland Control Share Acquisition Act also may make it more difficult for a third party to obtain control of us and increase the difficulty of consummating such a transaction. Our bylaws provide that the Maryland Control Share Acquisition Act does not apply to shares acquired by our Adviser and/or our Adviser’s affiliates.

We have also adopted other measures that may make it difficult for a third party to obtain control of us, including provisions of our charter classifying our Board of Directors in three classes serving staggered three-year terms; majority voting for directors in contested elections; and provisions of our charter authorizing our Board of Directors to classify or reclassify shares of our stock in one or more classes or series, including preferred shares, to cause the issuance of additional shares of our stock of any class or series, and to amend our charter, without stockholder approval, to increase or decrease the number of shares of stock of any class or series that we have authority to issue. These provisions, as well as other provisions of our charter and bylaws, may delay, defer or prevent a transaction or a change in control that could give the holders of our shares the opportunity to realize a premium over the value of our shares or otherwise be in their best interest.

***Our Board of Directors is authorized to reclassify any unissued shares of common stock into one or more classes or series of stock, including preferred stock, which could convey special rights and privileges to its owners.***

As noted above, under the MGCL and our charter, our Board of Directors is authorized to classify and reclassify any authorized but unissued shares of stock into one or more classes or series of stock, including preferred stock. The cost of any such reclassification would be borne by our existing stockholders. Prior to issuance of shares of each class or series, our Board of Directors will be required by the MGCL and our charter to set the preferences, conversion or other rights, voting powers, restrictions, limitations as to dividends or other distributions, qualifications and terms or conditions of redemption for each class or series. Thus, our Board of Directors could authorize the issuance of shares of preferred stock with terms and conditions that could have the effect of delaying, deferring or preventing a transaction or a change in control that might involve a premium price for holders of our common stock or otherwise be in their best interest. Certain matters under the 1940 Act require the separate vote of the holders of any issued and outstanding preferred stock. For example, holders of preferred stock would vote as a separate class from the holders of common stock on a proposal to cease operations as a BDC. In addition, the 1940 Act provides that holders of preferred stock are entitled to vote separately from holders of common stock to elect two preferred stock directors. The issuance of preferred shares convertible into shares of common stock may also reduce the net income and net asset value per share of our common stock upon conversion; provided, that we will only be permitted to issue such convertible preferred stock to the extent we comply with the requirements of Section 61 of the 1940 Act, including obtaining common stockholder approval. These effects, among others, could have an adverse effect on an investment in our common stock.



***Our bylaws include an exclusive forum selection provision, which could limit our stockholders' ability to obtain a favorable judicial forum for disputes with us or our directors, officers, employees or other agents.***

Our bylaws require that, unless we consent in writing to the selection of an alternative forum, the Circuit Court for Baltimore City (or, if that court does not have jurisdiction, the United States District Court for the District of Maryland, Northern Division) shall be the sole and exclusive forum for (a) any derivative action or proceeding brought on our behalf, (b) any Internal Corporate Claim, as such term is defined in the MGCL, (c) any action asserting a claim of breach of any duty owed by any of our directors, officers, employees or other agents to us or to our stockholders, (d) any action asserting a claim against us or any of our directors, officers, employees or other agents arising pursuant to any provision of the MGCL or our charter or bylaws, or (e) any other action asserting a claim against us or any of our directors, officers, employees or other agents that is governed by the internal affairs doctrine. The exclusive forum selection provision will not apply to claims arising under the federal securities laws, or any other claim for which the federal courts have exclusive jurisdiction. The exclusive forum selection provision may increase costs for a shareholder to bring a claim and may discourage claims or limit shareholders' ability to bring a claim in a judicial forum that they find favorable. It is also possible that a court could rule that the provision is inapplicable or unenforceable. If this occurred, we may incur additional costs associated with resolving such action in another forum, and/or the other forum may incorrectly apply or interpret the applicable Maryland law (in a manner that is adverse to us), which could materially adversely affect our business, financial condition and results of operations.

***We are subject to risks associated with communications and information systems.***

We depend on the communications and information systems of our Adviser and its affiliates as well as certain third-party service providers. As these systems became more important to our business, the risks posed to these communications and information systems have continued to increase. Any failure or interruption in these systems could cause disruptions in our activities, including because we do not maintain any such systems of our own. In addition, these systems are subject to potential attacks, including through adverse events that threaten the confidentiality, integrity or availability of our information resources. These attacks, which may include cyber incidents, may involve a third-party gaining unauthorized access to our communications or information systems for purposes of misappropriating assets, stealing confidential information related to our operations or portfolio companies, corrupting data or causing operational disruption. Any such attack could result in disruption to our business, misstated or unreliable financial data, liability for stolen assets or information, increased cybersecurity protection and insurance costs, litigation and damage to our business relationships, any of which could have a material adverse effect on our business, financial condition and results of operations.

***We may be unable to invest a significant portion of the net proceeds from this initial public offering, or any follow-on offering of shares of our common stock, on acceptable terms within an attractive time frame.***

Delays in investing the net proceeds raised in this initial public offering or any follow-on offering of shares of our common stock may cause our performance to be worse than that of other fully invested Business Development Companies or other lenders or investors pursuing comparable investment strategies. We cannot assure you that we will be able to identify any investments that meet our investment objective or that any investment that we make will produce a positive return. We may be unable to invest the net proceeds of this initial public offering or any follow-on offering on acceptable terms within the time period that we anticipate or at all, which could harm our financial condition and operating results.

We anticipate that, depending on market conditions, it may take us a substantial period of time to invest substantially all of the net proceeds of this initial public offering, or any follow-on offering, in securities meeting our investment objective. During this period, we will invest the net proceeds from this initial public offering or any follow-on offering primarily in high-quality, short-term debt securities, consistent with our BDC election and our election to be taxed as a RIC, at yields significantly below the returns which we expect to achieve when our portfolio is fully invested in securities meeting our investment objective. As a result, any distributions that we pay during this period may be substantially lower than the distributions that we may be able to pay when our portfolio is fully invested in securities meeting our investment objective. In addition, until such time as the net proceeds of this initial public offering or any follow-on offering are invested in securities meeting our investment objective, the market price for our common stock may decline. Thus, the return on your investment may be lower than when, if ever, our portfolio is fully invested in securities meeting our investment objective.

***We may experience fluctuations in our quarterly results.***

We may experience fluctuations in our quarterly results due to a number of factors, including our ability or inability to make investments in companies that meet our investment criteria, the interest rate payable on the debt securities we may acquire, changes in accrual status of our portfolio company investments, distributions, the level of our expenses, variations in and the timing of the recognition of realized and unrealized gains or losses, the degree to which we encounter competition in our market and general economic conditions. As a result of these factors, results for any period should not be relied upon as being indicative of performance in future periods.

***We are an "emerging growth company" and we cannot be certain if the reduced disclosure requirements applicable to emerging growth companies will make our shares of common stock less attractive to investors.***

We are an "emerging growth company," as defined in the Jumpstart Our Business Startups Act of 2012, or the "JOBS Act." As a result, we intend to take advantage of the exemption for emerging growth companies allowing us to temporarily forgo the auditor attestation requirements of Section 404(b) of the Sarbanes-Oxley Act of 2002 (the "Sarbanes-Oxley Act."). We cannot predict if investors will find shares of our common stock less attractive because we will rely on this exemption. If some investors find our shares of common stock less attractive as a result, there may be a less active trading market for our shares and our share price may be more volatile. We will remain an emerging growth company until the earlier of (a) the last day of the fiscal year (i) following the fifth anniversary of the completion of this offering, (ii) in which we have total annual gross revenue of at least \$1.07 billion, or (iii) in which we are deemed to be a large accelerated filer, which means the market value of our common stock that is held by non-affiliates exceeds \$700 million as of the end of our prior second fiscal quarter, and (b) the date on which we have issued more than \$1 billion in non-convertible debt during the prior three-year period.

In addition, Section 107 of the JOBS Act also provides that an “emerging growth company” can take advantage of the extended transition period provided in Section 7(a)(2)(B) of the Securities Act of 1933, as amended (the “Securities Act”) for complying with new or revised accounting standards. In other words, an “emerging growth company” can delay the adoption of certain accounting standards until those standards would otherwise apply to private companies. We will take advantage of the extended transition period for complying with new or revised accounting standards, which may make it more difficult for investors and securities analysts to evaluate us since our financial statements may not be comparable to companies that comply with public company effective dates and may result in less investor confidence.

***Our status as an “emerging growth company” under the JOBS Act may make it more difficult to raise capital as and when we need it.***

Because of the exemptions from various reporting requirements provided to us as an “emerging growth company” and because we will have an extended transition period for complying with new or revised financial accounting standards, we may be less attractive to investors and it may be difficult for us to raise additional capital as and when we need it. Investors may be unable to compare our business with other companies in our industry if they believe that our financial accounting is not as transparent as other companies in our industry. If we are unable to raise additional capital as and when we need it, our financial condition and results of operations may be materially and adversely affected.

***If we fail to maintain an effective system of internal control over financial reporting, we may not be able to accurately report our financial results or prevent fraud. As a result, stockholders could lose confidence in our financial and other public reporting, which would harm our business and the trading price of our common stock.***

Effective internal controls over financial reporting are necessary for us to provide reliable financial reports and, together with adequate disclosure controls and procedures, are designed to prevent fraud. Any failure to implement required new or improved controls, or difficulties encountered in their implementation could cause us to fail to meet our reporting obligations. We may identify deficiencies in our internal control over financial reporting in the future, including significant deficiencies and material weaknesses. A “significant deficiency” is a deficiency, or a combination of deficiencies, in internal control over financial reporting that is less severe than a material weakness, yet important enough to merit attention by those responsible for oversight of a company’s financial reporting. A “material weakness” is a deficiency, or a combination of deficiencies, in internal control over financial reporting such that there is a reasonable possibility that a material misstatement of the company’s annual or interim financial statements will not be prevented or detected on a timely basis. A deficiency in internal control exists when the design or operation of a control does not allow management or employees, in the normal course of performing their assigned functions, to prevent or detect misstatements on a timely basis.

In addition, any testing by us conducted in connection with Section 404 of the Sarbanes-Oxley Act, or the subsequent testing by our independent registered public accounting firm (when undertaken, as noted below), may reveal deficiencies in our internal control over financial reporting that are deemed to be material weaknesses or that may require prospective or retroactive changes to our financial statements or identify other areas for further attention or improvement. Inferior internal controls could also cause investors to lose confidence in our reported financial information, which could have a negative effect on the trading price of our common stock.

We will be required to disclose changes made in our internal control on financial reporting on a quarterly basis and our management will be required to assess the effectiveness of these controls annually. However, for as long as we are an “emerging growth company” under the JOBS Act, our independent registered public accounting firm will not be required to attest to the effectiveness of our internal control over financial reporting pursuant to Section 404. We could be an emerging growth company for up to five years. An independent assessment of the effectiveness of our internal controls could detect problems that our management’s assessment might not detect. Undetected material weaknesses in our internal controls could lead to financial statement restatements and require us to incur the expense of remediation.

***We will incur significant costs as a result of being a publicly traded company.***

As a publicly traded company, we will incur legal, accounting and other expenses, including costs associated with the periodic reporting requirements applicable to a company whose securities are registered under the Securities Exchange Act of 1934, as amended (the “Exchange Act”), as well as additional corporate governance requirements, including requirements under the Sarbanes-Oxley Act, and other rules implemented by the SEC and the listing standards of the Nasdaq Stock Market. Upon ceasing to qualify as an emerging growth company under the JOBS Act, our independent registered public accounting firm will be required to attest to the effectiveness of our internal control over financial reporting pursuant to Section 404 of the Sarbanes-Oxley Act, which will increase costs associated with our periodic reporting requirements.

## Risks Relating to Conflicts of Interests

### ***Our incentive fee may induce our Adviser to make speculative investments.***

The incentive fee that will be payable by us to our Adviser may create an incentive for our Adviser to make investments on our behalf that are risky or more speculative than would be the case in the absence of such compensation arrangement, which could result in higher investment losses, particularly during cyclical economic downturns. The Incentive Fee on Income is based on a percentage of our net investment income (subject to a hurdle rate), which may encourage our Adviser to use leverage to increase the return on our investments or otherwise manipulate our income so as to recognize income in quarters where the hurdle rate is exceeded and may result in an obligation for us to pay an Incentive Fee on Income to the Adviser even if we have incurred a loss for an applicable period.

The Incentive Fee on Income that will be payable by us to our Adviser also may create an incentive for our Adviser to invest on our behalf in instruments that have a deferred interest feature. Under these investments, we would accrue the interest over the life of the investment but would not receive the cash income from the investment until the end of the investment's term, if at all. Our net investment income used to calculate the Incentive Fee on Income, however, will include accrued interest. Thus, a portion of the Incentive Fee on Income would be based on income that we will have not yet received in cash and may never receive in cash if the portfolio company is unable to satisfy such interest payment obligation to us. The Adviser is not obligated to return the Incentive Fee on Income it receives on accrued interest that is later determined to be uncollectible in cash. While we may make Incentive Fee on Income payments on income accruals that we may not collect in the future and with respect to which we do not have a "claw back" right against our Adviser, the amount of accrued income written off in any period will reduce our income in the period in which such write-off was taken and thereby may reduce such period's Incentive Fee on Income payment.

In addition, our Adviser may be entitled to receive an Incentive Fee on Capital Gains based upon net capital gains realized on our investments. Unlike the Incentive Fee on Income, there will be no performance threshold applicable to the Incentive Fee on Capital Gains. As a result, our Adviser may have a tendency to invest more in investments that are likely to result in capital gains as compared to income producing securities. Such a practice could result in our investing in more speculative securities than would otherwise be the case, which could result in higher investment losses, particularly during economic downturns.

Given the subjective nature of the investment decisions made by our Adviser on our behalf, we will be unable to monitor these potential conflicts of interest between us and our Adviser.

### ***Our base management fee may induce our Adviser to incur leverage.***

Our base management fee will be payable based upon our gross assets, which would include any borrowings for investment purposes, and which may encourage our Adviser to use leverage to make additional investments. Given the subjective nature of the investment decisions that our Adviser may make on our behalf and the discretion related to incurring leverage in connection with any such investments, we will be unable to monitor this potential conflict of interest between us and our Adviser.

### ***There are significant potential conflicts of interest that could adversely impact our investment returns.***

Our executive officers and directors, and certain members of our Adviser, serve or may serve as officers, directors or principals of entities that may operate in the same or a related line of business as us or as investment funds managed by our affiliates. For example, SSC presently serves as a manager to several special purpose acquisition companies, or SPACs. These investment vehicles under management were formed for the purpose of

investing in specific private equity transactions, which differ from our mandate. SSC and its affiliates also manage private investment funds, and may manage other funds in the future, that have investment mandates that are similar, in whole or in part, to ours. Therefore, there may be certain investment opportunities that satisfy the investment criteria for us as well as private investment funds advised by SSC or its affiliates. In addition, SSC and its affiliates may have obligations to investors in other entities that they advise or sub-advise, the fulfillment of which might not be in the best interests of us or our stockholders. An investment in us is not an investment in any of these other entities.

For example, the personnel of our Adviser may face conflicts of interest in the allocation of investment opportunities to us and such other funds and accounts. Moreover, the Adviser and the investment professionals are engaged in other business activities which divert their time and attention. The investment professionals will devote as much time to us as such professionals deem appropriate to perform their duties in accordance with the Investment Advisory Agreement. However, such persons may be committed to providing investment advisory and other services for other clients, and engage in other business ventures in which we have no interest. As a result of these separate business activities, the Adviser may have conflicts of interest in allocating management time, services and functions among us, other advisory clients and other business ventures.

SSC has investment allocation guidelines that govern the allocation of investment opportunities among the investment funds and accounts managed or sub-advised by SSC and its affiliates. To the extent an investment opportunity is appropriate for us or any other investment fund or account managed or sub-advised by SSC or its affiliates, SSC will adhere to its investment allocation guidelines in order to determine a fair and equitable allocation.

Although SSC will endeavor to allocate investment opportunities in a fair and equitable manner, we and our common stockholders could be adversely affected to the extent investment opportunities are allocated among us and other investment vehicles managed or sponsored by, or affiliated with, our executive officers, directors and members of our Adviser. We might not participate in each individual opportunity, but will, on an overall basis, be entitled to participate equitably with other entities managed by SSC and its affiliates. SSC seeks to treat all clients fairly and equitably such that none receive preferential treatment vis-à-vis the others over time, in a manner consistent with its fiduciary duty to each of them; however, in some instances, especially in instances of limited liquidity, the factors may not result in pro rata allocations or may result in situations where certain funds or accounts receive allocations where others do not.

Pursuant to the Investment Advisory Agreement, our Adviser's liability is limited and we are required to indemnify our Adviser against certain liabilities. This may lead our Adviser to act in a riskier manner in performing its duties and obligations under the Investment Advisory Agreement than it would if it were acting for its own account, and creates a potential conflict of interest.

Pursuant to the Administration Agreement, SSC furnishes us with the facilities, including our principal executive office, and administrative services necessary to conduct our day-to-day operations. We pay SSC its allocable portion of overhead and other expenses incurred by SSC in performing its obligations under the Administration Agreement, including, without limitation, a portion of the rent at market rates and the compensation of our CFO and CCO and their respective staffs (based on a percentage of time such individuals devote, on an estimated basis, to our business affairs).

#### **Risks Relating to Our Use of Leverage and Credit Facilities**

*If we borrow money, the potential for loss on amounts invested in us will be magnified and may increase the risk of investing in us.*

Borrowings, also known as leverage, magnify the potential for loss on invested equity capital. If we use leverage to partially finance our investments, through borrowings from banks and other lenders, you will experience increased risks of investing in our common stock, including the likelihood of default. If the value of our assets decreases, leveraging would cause NAV to decline more sharply than it otherwise would have had we not leveraged. Similarly, any decrease in our income would cause our net income to decline more sharply than it would have had we not borrowed. To the extent we incur additional leverage, these effects would be further magnified, increasing the risk of investing in us. Such a decline could negatively affect our ability to make common stock distributions or

scheduled debt payments. Leverage is generally considered a speculative investment technique and we only intend to use leverage if expected returns will exceed the cost of borrowing.

As a BDC, under the 1940 Act we generally are not permitted to incur indebtedness unless immediately after such borrowing we have an asset coverage for total borrowings of at least 150%. For example, under a 150% asset coverage ratio a BDC may borrow \$2 for investment purposes of every \$1 of investor equity. We are currently targeting a debt-to-equity ratio of 0.50x (i.e., we aim to have one dollar of equity for each \$0.50 of debt outstanding). If we were to incur such leverage, our NAV will decline more sharply if the value of our assets declines than if we had not incurred such leverage.

***Any credit facility we may enter into in the future would likely subject all or significant amounts of our assets to security interests and if we default on our obligations under such a credit facility, we may suffer adverse consequences, including foreclosure on our assets.***

If we enter into a secured credit facility, all or significant amounts of our assets would likely be pledged as collateral to secure borrowings thereunder. If we default on our obligations under such a facility, the lenders may have the right to foreclose upon and sell, or otherwise transfer, the collateral subject to their security interests or their superior claim. In such event, we may be forced to sell our investments to raise funds to repay our outstanding borrowings in order to avoid foreclosure and these forced sales may be at times and at prices we would not consider advantageous. Moreover, such deleveraging of our company could significantly impair our ability to effectively operate our business in the manner in which we intend to operate. As a result, we could be forced to curtail or cease new investment activities and lower or eliminate the dividends that we intend to pay to our stockholders.

In addition, if the lenders exercise their right to sell the assets pledged under a secured credit facility, such sales may be completed at distressed sale prices, thereby diminishing or potentially eliminating the amount of cash available to us after repayment of the amounts outstanding under such facility.

***The current period of capital markets disruption and economic uncertainty may make it difficult to extend the maturity of, or refinance, our existing indebtedness or obtain new indebtedness and any failure to do so could have a material adverse effect on our business, financial condition or results of operations.***

Current market conditions may make it difficult to extend the maturity of or refinance our existing indebtedness or obtain new indebtedness with similar terms and any failure to do so could have a material adverse effect on our business. The debt capital that will be available to us in the future, if at all, may be at a higher cost and on less favorable terms and conditions than what we currently experience, including being at a higher cost in rising rate environments. If we are unable to raise or refinance debt, then our equity investors may not benefit from the potential for increased returns on equity resulting from leverage and we may be limited in our ability to make new commitments or to fund existing commitments to our portfolio companies. An inability to extend the maturity of, or refinance, our existing indebtedness or obtain new indebtedness could have a material adverse effect on our business, financial condition or results of operations.

Our ability to obtain new indebtedness or refinance existing indebtedness may be limited because of the unwillingness or inability of certain financial institutions to transact with cannabis-related companies such as ourselves, and we may be forced to liquidate our investments at inopportune times or prices to repay debt. See “— Risks Related to the Cannabis and Hemp Industries” below.

#### **Risks Relating to Distributions**

***Because we intend to distribute at least 90% of our taxable income each taxable year to our stockholders in connection with our election to be treated as a RIC, we will continue to need additional capital to finance our growth.***

In order to qualify for the tax benefits available to RICs and to minimize corporate-level U.S. federal income taxes, we intend to distribute to our stockholders at least 90% of our taxable income each taxable year, except that we may retain certain net capital gains for investment, and treat such amounts as deemed distributions to our stockholders. If we elect to treat any amounts as deemed distributions, we would be subject to income taxes at the corporate rate applicable to net capital gains on such deemed distributions on behalf of our stockholders. As a result of these requirements, we will likely need to raise capital from other sources to grow our business. Because we will

continue to need capital to grow our investment portfolio, these limitations together with the asset coverage requirements applicable to us may prevent us from incurring debt and require us to raise additional equity at a time when it may be disadvantageous to do so.

***We may not be able to pay you distributions, our distributions may not grow over time and/or a portion of our distributions may be a return of capital. A return of capital generally is a return of a stockholder's investment rather than a return of earnings or gains derived from our investment activities. As a result, a return of capital will (i) lower your tax basis in your shares and thereby increase the amount of capital gain (or decrease the amount of capital loss) realized upon a subsequent sale or redemption of such shares, and (ii) reduce the amount of funds we have for investment in portfolio companies. We have not established any limit on the extent to which we may use offering proceeds to fund distributions.***

We intend to pay distributions to our stockholders out of assets legally available for distribution. We cannot assure you that we will achieve investment results that will allow us to sustain a specified level of cash distributions or periodic increases in cash distributions. In addition, the inability to satisfy the asset coverage test applicable to us as a BDC can limit our ability to pay distributions. All distributions will be paid at the discretion of our Board of Directors and will depend on our earnings, our financial condition, maintenance of our ability to be subject to tax as a RIC, compliance with applicable BDC regulations and such other factors as our Board of Directors may deem relevant from time to time. We cannot assure you that we will pay distributions to our stockholders in the future.

When we make distributions, our distributions generally will be treated as dividends for U.S. federal income tax purposes to the extent such distributions are paid out of our current or accumulated earnings and profits. Distributions in excess of current and accumulated earnings and profits will be treated as a non-taxable return of capital to the extent of a stockholder's basis in our stock and, assuming that a stockholder holds our stock as a capital asset, thereafter as a capital gain. A return of capital generally is a return of a stockholder's investment rather than a return of earnings or gains derived from our investment activities. Moreover, we may pay all or a substantial portion of our distributions from the proceeds of the sale of shares of our common stock or from borrowings in anticipation of future cash flow, which could constitute a return of stockholders' capital and will lower such stockholders' tax basis in our shares, which may result in increased tax liability to stockholders when they sell or otherwise dispose of such shares. The tax liability incurred by such stockholders upon the sale or other disposition of shares of our common stock may increase even if such shares are sold at a loss. Distributions from offering proceeds also could reduce the amount of capital we ultimately have available to invest in portfolio companies.

***We will be subject to corporate-level U.S. federal income tax if we are unable to obtain and maintain our qualification as a RIC under Subchapter M of the Code or do not satisfy the annual distribution requirement.***

To obtain and maintain our status as a RIC and be relieved of U.S. federal taxes on income and gains distributed to our stockholders, we must meet the following annual distribution, income source and asset diversification requirements:

- The annual distribution requirement will be satisfied if we distribute to our stockholders each taxable year an amount generally at least equal to 90% of the sum of our net taxable income plus realized net short-term capital gains in excess of realized net long-term capital losses, if any. Because we may use debt financing, we are subject to an asset coverage ratio requirement under the 1940 Act and we may be subject to certain financial covenants under our debt arrangements that could, under certain circumstances, restrict us from making distributions necessary to satisfy the annual distribution requirement. If we are unable to obtain cash from other sources, we could fail to qualify for RIC tax treatment and thus could become subject to corporate-level income tax.
- The 90% gross income test will be satisfied if we earn at least 90% of our gross income for each taxable year from dividends, interest, gains from the sale of stock or securities or similar sources.
- The diversification test will be satisfied if, at the end of each quarter of our taxable year, at least 50% of the value of our assets consist of cash, cash equivalents, U.S. government securities, securities of other RICs, and other acceptable securities; and no more than 25% of the value of our assets can be invested in the securities, other than U.S. government securities or securities of other RICs, of one issuer, of two or more issuers that are controlled, as determined under applicable Code rules, by us and that are engaged in the

same or similar or related trades or businesses or of certain “qualified publicly traded partnerships.” Failure to meet these requirements may result in our having to dispose of certain investments quickly in order to prevent the loss of RIC status. Because most of our investments will be in private companies, and therefore will be relatively illiquid, any such dispositions could be made at disadvantageous prices and could cause us to incur substantial losses.

If we fail to be treated as a RIC and are subject to entity-level U.S. federal corporate income tax, the resulting corporate taxes could substantially reduce our net assets, the amount of income available for distribution and the amount of our distributions.

***We may have difficulty paying our required distributions if we are required to recognize income for U.S. federal income tax purposes before or without receiving cash representing such income.***

For U.S. federal income tax purposes, we generally may be required to include in income certain amounts that we will have not yet received in cash, such as OID or certain income accruals on contingent payment debt instruments, which may occur if we receive warrants in connection with the origination of a loan or possibly in other circumstances. Such OID is generally required to be included in income before we receive any corresponding cash payments. In addition, our loans may contain PIK interest provisions. Any PIK interest, computed at the contractual rate specified in each loan agreement, is generally required to be added to the principal balance of the loan and recorded as interest income. We also may be required to include in income certain other amounts that we do not receive, and may never receive, in cash. To avoid the imposition of corporate-level tax on us, this non-cash source of income may need to be distributed to our stockholders in cash or, in the event we determine to do so, in shares of our common stock, even though we may have not yet collected and may never collect the cash relating to such income.

Since, in certain cases, we may recognize income before or without receiving cash representing such income, we may have difficulty meeting the annual distribution requirement necessary to be relieved of entity-level U.S. federal taxes on income and gains distributed to our stockholders. Accordingly, we may have to sell or otherwise dispose of some of our investments at times and/or at prices we would not consider advantageous, raise additional debt or equity capital or forgo new investment opportunities for this purpose. If we are not able to obtain cash from other sources, we may fail to satisfy the annual distribution requirement and thus become subject to corporate-level U.S. federal income tax.

***We may in the future choose to pay distributions partly in our own stock, in which case you may be subject to tax in excess of the cash you receive.***

We may distribute taxable distributions that are payable in part in our stock. In accordance with certain applicable U.S. Treasury regulations and other related administrative pronouncements issued by the Internal Revenue Service, or the IRS, a RIC may be eligible to treat a distribution of its own stock as fulfilling its RIC distribution requirements if each stockholder is permitted to elect to receive his or her entire distribution in either cash or stock of the RIC, subject to the satisfaction of certain guidelines. If too many stockholders elect to receive cash (which generally may not be less than 20% of the value of the overall distribution), each stockholder electing to receive cash must receive a pro rata amount of cash (with the balance of the distribution paid in stock). If these and certain other requirements are met, for U.S. federal income tax purposes, the amount of the distribution paid in stock generally will be equal to the amount of cash that could have been received instead of stock. Taxable stockholders receiving such distributions will be required to include the full amount of the distribution as ordinary income (or as long-term capital gain to the extent such distribution is properly reported as a capital gain dividend) to the extent of their share of our current and accumulated earnings and profits for U.S. federal income tax purposes. As a result, a U.S. stockholder may be subject to tax with respect to such distributions in excess of any cash received. If a U.S. stockholder sells the stock it receives as a distribution in order to pay this tax, the sales proceeds may be less than the amount included in income with respect to the distribution, depending on the market price of our stock at the time of the sale. Furthermore, with respect to non-U.S. stockholders, we may be required to withhold U.S. tax with respect to such distributions, including in respect of all or a portion of such distribution that is payable in stock. In addition, if a significant number of our stockholders determine to sell shares of our stock in order to pay taxes owed on distributions, such sales may put downward pressure on the trading price of our stock.

## Risks Relating to Our Investments

*Our investments in portfolio companies may be risky, and we could lose all or parts of our investments.*

The companies in which we intend to invest will typically be highly leveraged, and, in most cases, our investments in such companies will not be rated by any rating agency. If such investments were rated, we believe that they would likely receive a rating from a nationally recognized statistical rating organization of below investment grade (i.e., below BBB- or Baa), which is often referred to as “high-yield” and “junk.” Exposure to below investment grade securities involves certain risks, and those securities are viewed as having predominately speculative characteristics with respect to the issuer’s capacity to pay interest and repay principal. In addition, some of the loans in which we may invest may be “covenant-lite” loans. We use the term “covenant-lite” loans to refer generally to loans that do not have a complete set of financial maintenance covenants. Generally, “covenant-lite” loans provide borrower companies more freedom to negatively impact lenders because their covenants are incurrence-based, which means they are only tested and can only be breached following an affirmative action of the borrower, rather than by a deterioration in the borrower’s financial condition. Accordingly, to the extent we invest in “covenant-lite” loans, we may have fewer rights against a borrower and may have a greater risk of loss on such investments as compared to investments in or exposure to loans with a complete set of financial maintenance covenants. Investing in middle-market companies involves a number of significant risks.

Certain of our debt investments may consist of debt securities for which issuers are not required to make principal payments until the maturity of such debt securities, which could result in a substantial loss to us if such issuers are unable to refinance or repay their debt at maturity. Increases in interest rates may affect the ability of our portfolio companies to repay debt or pay interest, which may in turn affect the value of our portfolio investments, and our business, financial condition and results of operations.

Among other things, portfolio companies:

- may have limited financial resources, may have limited or negative EBITDA and may be unable to meet their obligations under their debt instruments that we hold, which may be accompanied by a deterioration in the value of any collateral and a reduction in the likelihood of us realizing any guarantees from subsidiaries or affiliates of our portfolio companies that we may have obtained in connection with our investments, as well as a corresponding decrease in the value of the equity components of our investments;
- may have shorter operating histories, narrower product lines, smaller market shares and/or significant customer concentrations than larger businesses, which tend to render them more vulnerable to competitors’ actions and market conditions, as well as general economic downturns;
- may operate in regulated industries and/or provide services to federal, state or local governments, or operate in industries that provide services to regulated industries or federal, state or local governments, any of which could lead to delayed payments for services or subject the company to changing payment and reimbursement rates or other terms;
- may not have collateral sufficient to pay any outstanding interest or principal due to us in the event of a default by these companies;
- are more likely to depend on the management talents and efforts of a small group of people; therefore, the death, disability, resignation or termination of one or more of these persons could have a material adverse impact on our portfolio company and, in turn, on us;
- may have difficulty borrowing or otherwise accessing the capital markets to fund capital needs, which may be more acute because such companies are operating in the cannabis industry, and which limit their ability to grow or repay outstanding indebtedness at maturity (see “— Risks Related to the Cannabis and Hemp Industries” below);
- may not have audited financial statements or be subject to the Sarbanes-Oxley Act and other rules that govern public companies;



- generally have less predictable operating results, may from time to time be parties to litigation, may be engaged in rapidly changing businesses with products subject to a substantial risk of obsolescence, and may require substantial additional capital to support their operations, finance expansion or maintain their competitive position; and
- generally have less publicly available information about their businesses, operations and financial condition.

These factors may make certain of our portfolio companies more susceptible to the adverse effects of the COVID-19 pandemic and resulting government regulations. As a result of the limitations associated with certain portfolio companies, we must therefore rely on the ability of our Adviser to obtain adequate information through due diligence to evaluate the creditworthiness and potential returns from investing in these companies. In addition, certain of our officers and directors may serve as directors on the boards of such companies. To the extent that litigation arises out of our investments in these companies, our officers and directors may be named as defendants in such litigation, which could result in an expenditure of funds (through our indemnification of such officers and directors) and the diversion of management time and resources.

Finally, as noted above, little public information generally exists about privately owned companies, and these companies may not have third-party debt ratings or audited financial statements. We must therefore rely on the ability of our Adviser to obtain adequate information through due diligence to evaluate the creditworthiness and potential returns from investing in these companies. Additionally, these companies and their financial information will not generally be subject to the Sarbanes-Oxley Act and other rules that govern public companies.

***To the extent OID and PIK interest constitute a portion of our income, we may be exposed to higher risks with respect to such investments.***

Our investments may include OID and contractual PIK interest, which typically represents contractual interest added to a loan balance and due at the end of such loan's term. To the extent OID or PIK interest constitute a portion of our income, we will be exposed to typical risks associated with such income being required to be included in taxable and accounting income prior to receipt of cash, including the following:

- OID and PIK instruments may have higher yields, which reflect the payment deferral and credit risk associated with these instruments;
- OID and PIK accruals may create uncertainty about the source of our distributions to stockholders;
- OID and PIK instruments may have unreliable valuations because their continuing accruals require continuing judgments about the collectability of the deferred payments and the value of the collateral;
- OID and PIK instruments may represent a higher credit risk than coupon loans; and
- Our net investment income used to calculate the Incentive Fee on Income will include OID and PIK interest, and the Adviser is not obligated to return the Incentive Fee on Income it receives on OID and PIK interest that is later determined to be uncollectible in cash.

***If we acquire the securities and obligations of distressed or bankrupt companies, such investments may be subject to significant risks, including lack of income, extraordinary expenses, uncertainty with respect to satisfaction of debt, lower-than-expected investment values or income potentials and resale restrictions.***

We may acquire the securities and other obligations of distressed or bankrupt companies. At times, distressed debt obligations may not produce income and may require us to bear certain extraordinary expenses (including legal, accounting, valuation and transaction expenses) in order to protect and recover our investment. Therefore, to the extent we invest in distressed debt, our ability to achieve current income for our stockholders may be diminished, particularly where the portfolio company has negative EBITDA.

We also will be subject to significant uncertainty as to when and in what manner and for what value the distressed debt we invest in will eventually be satisfied, whether through liquidation, an exchange offer or a plan of

reorganization involving the distressed debt securities or a payment of some amount in satisfaction of the obligation. In addition, even if an exchange offer is made or plan of reorganization is adopted with respect to distressed debt held by us, there can be no assurance that the securities or other assets received by us in connection with such exchange offer or plan of reorganization will not have a lower value or income potential than may have been anticipated when the investment was made.

Moreover, any securities received by us upon completion of an exchange offer or plan of reorganization may be restricted as to resale. As a result of our participation in negotiations with respect to any exchange offer or plan of reorganization with respect to an issuer of distressed debt, we may be restricted from disposing of such securities.

***Our portfolio companies may prepay loans, which may reduce our yields if capital returned cannot be invested in transactions with equal or greater expected yields.***

The loans we anticipate holding in our investment portfolio may be prepaid at any time, generally with little advance notice. Whether a loan is prepaid will depend both on the continued positive performance of the portfolio company and the existence of favorable financing market conditions that allow such company the ability to replace existing financing with less expensive capital. As market conditions change, we do not know when, and if, prepayment may be possible for each portfolio company. In some cases, the prepayment of a loan may reduce our achievable yield if the capital returned cannot be invested in transactions with equal or greater expected yields, which could have a material adverse effect on our business, financial condition and results of operations.

***The lack of liquidity in our investments may adversely affect our business.***

We intend to invest in companies whose securities are not publicly traded, and whose securities are subject to legal and other restrictions on resale or are otherwise less liquid than publicly traded securities. In fact, all of our assets may be invested in illiquid securities. The illiquidity of these investments may make it difficult for us to sell these investments when desired. In addition, if we are required to liquidate all or a portion of our portfolio quickly, we may realize significantly less than the value at which we had previously recorded these investments and suffer losses. Our investments are usually subject to contractual or legal restrictions on resale or are otherwise illiquid because there is usually no established trading market for such investments. In addition, we may also face restrictions on our ability to liquidate our investments if our Adviser or any of its affiliates have material nonpublic information regarding the portfolio company.

***We may not have the funds or ability to make additional investments in our portfolio companies.***

After our initial investment in a portfolio company, we may be called upon from time to time to provide additional funds to such company or have the opportunity to increase our investment through a follow-on investment. There is no assurance that we will make, or will have sufficient funds to make, follow-on investments. Any decisions not to make a follow-on investment or any inability on our part to make such an investment may have a negative impact on a portfolio company in need of such an investment, may result in a missed opportunity for us to increase our participation in a successful operation, may reduce the expected yield on the investment or may impair the value of our investment in any such portfolio company.

***Portfolio companies may be highly leveraged.***

We invest primarily in first lien loans issued by middle-market companies. Our portfolio companies may have, or may be permitted to incur, other debt that ranks equally with, or senior to, the debt in which we invest. By their terms, such debt instruments may entitle the holders to receive payments of interest or principal on or before the dates on which we are entitled to receive payments with respect to the debt instruments in which we invest. Also, in the event of insolvency, liquidation, dissolution, reorganization or bankruptcy of a portfolio company, holders of debt instruments ranking senior to our investment in that portfolio company would typically be entitled to receive payment in full before we receive any distribution. After repaying such senior creditors, such portfolio company may not have any remaining assets to use for repaying its obligation to us. In the case of debt ranking equally with debt instruments in which we invest, we would have to share on an equal basis any distributions with other creditors holding such debt in the event of an insolvency, liquidation, dissolution, reorganization or bankruptcy of the relevant portfolio company.

***Our portfolio companies may incur debt that ranks equally with, or senior to, some of our investments in such companies.***

We will invest primarily in senior secured loans, including unitranche and second lien debt instruments, as well as unsecured debt instruments, issued by our portfolio companies. If we invest in unitranche, second lien, or unsecured debt instruments, our portfolio companies typically may be permitted to incur other debt that ranks equally with, or senior to, such debt instruments. By their terms, such debt instruments may provide that the holders are entitled to receive payment of interest or principal on or before the dates on which we will be entitled to receive payments in respect of the debt securities in which we will invest. Also, in the event of insolvency, liquidation, dissolution, reorganization or bankruptcy of a portfolio company, holders of debt instruments ranking senior to our investment in that portfolio company would typically be entitled to receive payment in full before we receive any distribution in respect of our investment. In such cases, after repaying such senior creditors, such portfolio company may not have any remaining assets to use for repaying its obligation to us. In the case of debt ranking equally with debt securities in which we will invest, we would have to share on an equal basis any distributions with other creditors holding such debt in the event of an insolvency, liquidation, dissolution, reorganization or bankruptcy of the relevant portfolio company.

***The disposition of our investments may result in contingent liabilities.***

In connection with the disposition of an investment in private securities, we may be required to make representations about the business and financial affairs of the portfolio company typical of those made in connection with the sale of a business. We may also be required to indemnify the purchasers of such investment to the extent that any such representations turn out to be inaccurate or with respect to certain potential liabilities. These arrangements may result in contingent liabilities that ultimately yield funding obligations that must be satisfied through our return of certain distributions previously made to us.

***There may be circumstances where our debt investments could be subordinated to claims of other creditors or we could be subject to lender liability claims.***

Even though we may structure some of our investments as senior loans, if one of our portfolio companies were to enter bankruptcy proceedings, a bankruptcy court might re-characterize our debt investment and subordinate all or a portion of our claim to that of other creditors, depending on the facts and circumstances, including the extent to which we actually provide managerial assistance to that portfolio company. We may also be subject to lender liability claims for actions taken by us with respect to a borrower's business or instances where we exercise control over the borrower. It is possible that we could become subject to a lender's liability claim, including as a result of actions taken in rendering significant managerial assistance.

***Second priority liens on collateral securing loans that we may make to our portfolio companies may be subject to control by senior creditors with first priority liens. If there is a default, the value of the collateral may not be sufficient to repay in full both the first priority creditors and us.***

Certain loans that we make to portfolio companies may be secured on a second priority basis by the same collateral securing senior secured debt of such companies. The first priority liens on the collateral secure the portfolio company's obligations under any outstanding senior debt and may secure certain other future debt that may be permitted to be incurred by the company under the agreements governing the loans. The holders of obligations secured by the first priority liens on the collateral will generally control the liquidation of and be entitled to receive proceeds from any realization of the collateral to repay their obligations in full before us. In addition, the value of the collateral in the event of liquidation will depend on market and economic conditions, the availability of buyers and other factors. There can be no assurance that the proceeds, if any, from the sale or sales of all of the collateral would be sufficient to satisfy the loan obligations secured by the second priority liens after payment in full of all obligations secured by the first priority liens on the collateral. If such proceeds are not sufficient to repay amounts outstanding under the loan obligations secured by the second priority liens, then we, to the extent not repaid from the proceeds of the sale of the collateral, will only have an unsecured claim against the company's remaining assets, if any.

The rights we may have with respect to the collateral securing the loans we may make to portfolio companies with senior debt outstanding may also be limited pursuant to the terms of one or more inter-creditor agreements that

we enter into with the holders of senior debt. Under such an inter-creditor agreement, at any time that obligations that have the benefit of the first priority liens are outstanding, any of the following actions may be taken with respect to the collateral and will be at the direction of the holders of the obligations secured by the first priority liens: the ability to cause the commencement of enforcement proceedings against the collateral; the ability to control the conduct of such proceedings; the approval of amendments to collateral documents; releases of liens on the collateral; and waivers of past defaults under collateral documents. We may not have the ability to control or direct such actions, even if our rights are adversely affected.

***If we make unsecured debt investments, we may lack adequate protection in the event our portfolio companies become distressed or insolvent and will likely experience a lower recovery than more senior debtholders in the event such portfolio companies default on their indebtedness.***

We may make unsecured debt investments in portfolio companies. Unsecured debt investments are unsecured and junior to other indebtedness of the portfolio company. As a consequence, the holder of an unsecured debt investment may lack adequate protection in the event the portfolio company becomes distressed or insolvent and will likely experience a lower recovery than more senior debtholders in the event the portfolio company defaults on its indebtedness. In addition, unsecured debt investments of middle-market companies are often highly illiquid and in adverse market conditions may experience steep declines in valuation even if they are fully performing.

***We may need to foreclose on loans that are in default, which could result in losses.***

We may find it necessary to foreclose on loans that are in default. Foreclosure processes are often lengthy and expensive, and state court foreclosure processes and other creditors' remedies with respect to cannabis companies are largely untested. Results of foreclosure processes or other exercises of creditors' rights may be uncertain, as claims may be asserted by the relevant borrower or by other creditors or investors in such borrower that interfere with enforcement of our rights, such as claims that challenge the validity or enforceability of our loan or the priority or perfection of our security interests. Our borrowers may resist foreclosure actions or other remedies by asserting numerous claims, counterclaims and defenses against us, including, without limitation, lender liability claims and defenses, even when the assertions may have no merit, in an effort to prolong the foreclosure action or other remedy and seek to force us into a modification or buy-out of our loan for less than we are owed. Additionally, the transfer of certain collateral to us may be limited or prohibited by applicable laws and regulations. See "—The loans that we expect to make may be secured by collateral that is, and will be, subject to extensive regulations, such that if such collateral was foreclosed upon those regulations may result in significant costs and materially and adversely affect our business, financial condition, liquidity and results of operations." For transferable collateral, foreclosure or other remedies available may be subject to certain laws and regulations, including the need for regulatory disclosure and/or approval of such transfer. If federal law were to change to permit cannabis companies to seek federal bankruptcy protection, the applicable borrower could file for bankruptcy, which would have the effect of staying the foreclosure actions and delaying the foreclosure processes and potentially result in reductions or discharges of debt owed to us. Foreclosure may create a negative public perception of the collateral, resulting in a diminution of its value. Even if we are successful in foreclosing on collateral securing our loan, the liquidation proceeds upon sale of the collateral may not be sufficient to recover our loan. Any costs or delays involved in the foreclosure or a liquidation of the collateral will reduce the net proceeds realized and, thus, increase the potential for loss.

In the event a borrower defaults on any of its obligations to us and such debt obligations are equitized, we may not have the ability to hold such equity interests legally under federal law, which may result in additional losses on our loans to such entity.

***The loans that we expect to make may be secured by collateral that is, and will be, subject to extensive regulations, such that if such collateral was foreclosed upon those regulations may result in significant costs and materially and adversely affect our business, financial condition, liquidity and results of operations.***

The loans that we expect to make may be secured by collateral that is, and will be, subject to various legal and regulatory requirements, and we would be subject to such requirements if such collateral was foreclosed upon. Due to current legal requirements, we will not own equity securities in companies that are not compliant with all applicable laws and regulations within the jurisdiction in which they are located or operate, including federal laws, nor will we own any real estate used in cannabis-related operations in violation of state or federal law. While our loan agreements and related mortgages provide for foreclosure remedies, receivership remedies and/or other remedies that would allow us to cause the sale or other realization of collateral, the regulatory requirements and statutory prohibitions related to equity investments in cannabis companies and real property used in cannabis-related operations may cause significant delays or difficulties in realizing upon the expected value of such collateral. In addition, applicable legal requirements may prevent us from possessing or realizing the value of other collateral securing our loans, such as cannabis licenses, cannabis inventory or cannabis merchandise. Our inability to realize the full value of such collateral could have a material adverse effect on our business, financial condition, liquidity and results of operations. We may also be disadvantaged in a foreclosure process or other exercise of creditors' rights relative to other creditors that are able to hold such collateral. We make no assurance that existing regulatory policies will not materially and adversely affect the value or availability to us of all such collateral, or our standing relative to other creditors that are able to hold such collateral, or that additional regulations will not be adopted that would increase such potential material adverse effect.

***Certain assets of our borrowers may not be used as collateral or transferred to us due to applicable state laws and regulations governing the cannabis industry, and such restrictions could negatively impact our profitability.***

Each state that has legalized cannabis in some form has adopted its own set of laws and regulations that differ from one another. In particular, laws and regulations differ among states regarding the collateralization or transferability of cannabis-related assets, such as cannabis licenses, cannabis inventory, and ownership interests in licensed cannabis companies. Some state laws and regulations where our borrowers operate may prohibit the collateralization or transferability of certain cannabis-related assets. Other states may allow the collateralization or transferability of cannabis-related assets, but with restrictions, such as meeting certain eligibility requirements, utilization of state receiverships, and/or upon approval by the applicable regulatory authority. Prohibitions or restrictions on our or others' ability to acquire, own or hold certain cannabis-related assets securing the loans of our borrowers could have a material adverse effect on our business, financial condition, liquidity and results of operations. In addition, because the sales of such assets may be forced upon the borrower when time may be of the essence and available to a limited number of potential purchasers, the sales prices may be less than the prices that could be obtained with more time and/or in a larger market.

***The market value of properties and equipment securing our loans may decrease upon foreclosure if they cannot be used for cannabis related operations.***

Properties and equipment used for cannabis operations, particularly cultivation and manufacturing facilities and equipment, are generally more valuable than if used for other purposes. If we foreclose on any properties or equipment securing our loans, the inability to sell the property or equipment to a licensed cannabis company for a similar use may significantly decrease the market value of the foreclosed property or equipment, thereby having a material adverse effect on our business, financial condition, liquidity and results of operations.

***We may incur greater risk with respect to investments we acquire through assignments or participations of interests.***

Although we intend to originate a substantial portion of our loans, we may acquire loans through assignments or participations of interests in such loans. The purchaser of an assignment typically succeeds to all the rights and obligations of the assigning institution and becomes a lender under the credit agreement with respect to such debt obligation. However, the purchaser's rights can be more restricted than those of the assigning institution, and we may not be able to unilaterally enforce all rights and remedies under an assigned debt obligation and with regard to any associated collateral. A participation typically results in a contractual relationship only with the institution participating out the interest and not directly with the borrower. Sellers of participations typically include banks, broker-dealers, other financial institutions and lending institutions. In purchasing participations, we generally will have no right to enforce compliance by the borrower with the terms of the loan agreement against the borrower, and we may not directly benefit from the collateral supporting the debt obligation in which we have purchased the participation. As a result, we will be exposed to the credit risk of both the borrower and the institution selling the participation. Further, in purchasing participations in lending syndicates, we will not be able to conduct the same level of due diligence on a borrower or the quality of the loan with respect to which we are buying a participation as we would conduct if we were investing directly in the loan. This difference may result in us being exposed to greater credit or fraud risk with respect to such loans than we expected when initially purchasing the participation.

***We generally do not expect to control our portfolio companies.***

We generally do not expect to control our portfolio companies. As a result, we may be subject to the risk that a portfolio company may make business decisions with which we disagree and the management of such company, as representatives of the holders of their common equity, may take risks or otherwise act in ways that do not serve our interests as a debt investor, including actions that could decrease the value of our investment. Due to the lack of liquidity for our anticipated investments, we may not be able to dispose of our interests in our portfolio companies as readily as we would like or at an appropriate valuation.

***Defaults by our portfolio companies would harm our operating results.***

A portfolio company's failure to satisfy financial or operating covenants imposed by us or other lenders could lead to defaults and, potentially, termination of its loans and foreclosure on its secured assets, which could trigger cross-defaults under other agreements and jeopardize a portfolio company's ability to meet its obligations under the debt or equity securities that we hold. We may incur expenses to the extent necessary to seek recovery upon default or to negotiate new terms, which may include the waiver of certain financial covenants, with a defaulting portfolio company. In addition, some of the loans in which we may invest may be "covenant-lite" loans. We use the term "covenant-lite" loans to refer generally to loans that do not have a complete set of financial maintenance covenants. Generally, "covenant-lite" loans provide borrower companies more freedom to negatively impact lenders because their covenants are incurrence-based, which means they are only tested and can only be breached following an affirmative action of the borrower, rather than by a deterioration in the borrower's financial condition. Accordingly, to the extent we invest in "covenant-lite" loans, we may have fewer rights against a borrower and may have a greater risk of loss on such investments as compared to investments in or exposure to loans with a complete set of financial maintenance covenants.

We may write down the value of a portfolio company investment upon the worsening of the financial condition of the portfolio company or in anticipation of a default, which could also have a material adverse effect on our business, financial condition and results of operations.

***Our portfolio companies may experience financial distress and our investments in such companies may be restricted.***

Our portfolio companies may experience financial distress from time to time. Debt investments in such companies may cease to be income-producing, may require us to bear certain expenses to protect our investment and may subject us to uncertainty as to when, in what manner and for what value such distressed debt will eventually be satisfied, including through liquidation, reorganization or bankruptcy. Any restructuring can fundamentally alter the nature of the related investment, and restructurings may not be subject to the same underwriting standards that our Adviser employs in connection with the origination of an investment. In addition, we may write down the value of our investment in any such company to reflect the status of financial distress and future prospects of the business. Any restructuring could alter, reduce or delay the payment of interest or principal on any investment, which could delay the timing and reduce the amount of payments made to us. For example, if an exchange offer is made or plan of reorganization is adopted with respect to the debt securities we currently hold, there can be no assurance that the securities or other assets received by us in connection with such exchange offer or plan of reorganization will have a value or income potential similar to what we anticipated when our original investment was made or even at the time of restructuring. Restructurings of investments might also result in extensions of the term thereof, which could delay the timing of payments made to us, or we may receive equity securities, which may require significantly more of our management's time and attention or carry restrictions on their disposition. We cannot assure you that any particular restructuring strategy pursued by our Adviser will maximize the value of or recovery on any investment.

***We may not realize gains from our equity investments.***

Certain investments we may make may include warrants or other equity securities. In addition, we may make direct equity investments in companies. Our goal is ultimately to realize gains upon our disposition of such equity interests. However, the equity interests we may receive may not appreciate in value and, in fact, may decline in value. Accordingly, we may not be able to realize gains from the equity interests we may hold, and any gains that we do realize on the disposition of any such equity interests may not be sufficient to offset any other losses we may experience. We also may be unable to realize any value if a portfolio company does not have a liquidity event, such as a sale of the business, recapitalization or public offering, which would allow us to sell the underlying equity interests. We may seek puts or similar rights to give us the right to sell our equity securities back to the portfolio company issuer. We may be unable to exercise these put rights for the consideration provided in our investment documents if the issuer is in financial distress.

***We are subject to certain risks associated with foreign investments.***

We may make investments in foreign companies. Investing in foreign companies may expose us to additional risks not typically associated with investing in U.S. companies. These risks include changes in foreign exchange rates, exchange control regulations, political and social instability, expropriation, imposition of foreign taxes, less liquid markets and less available information than is generally the case in the U.S., higher transaction costs, less government supervision of exchanges, brokers and issuers, less developed bankruptcy laws, difficulty in enforcing contractual obligations, lack of uniform accounting and auditing standards and greater price volatility.

Foreign investment risk may be particularly high to the extent that we invest in securities of issuers based in or securities denominated in the currencies of emerging market countries. These securities may present market, credit, currency, liquidity, legal, political and other risks different from, and greater than, the risks of investing in developed foreign countries.

In addition, such foreign investments generally do not constitute "qualifying assets" under the 1940 Act.

Our success will depend, in part, on our ability to anticipate and effectively manage these and other risks. We cannot assure you that these and other factors will not have a material adverse effect on our business as a whole.

***We may expose ourselves to risks if we engage in hedging transactions.***

Subject to applicable provisions of the 1940 Act and applicable regulations promulgated by the CFTC, we may enter into hedging transactions, which may expose us to risks associated with such transactions. Such hedging may utilize instruments such as forward contracts, currency options and interest rate swaps, caps, collars and floors to seek to hedge against fluctuations in the relative values of our portfolio positions and amounts due under any credit facility from changes in currency and market interest rates. Use of these hedging instruments may include counterparty credit risk. Hedging against a decline in the values of our portfolio positions does not eliminate the possibility of fluctuations in the values of such positions and amounts due under any credit facility or prevent losses if the values of such positions decline. However, such hedging can establish other positions designed to gain from those same developments, thereby offsetting the decline in the value of such portfolio positions. Such hedging transactions may also limit the opportunity for gain if the values of the underlying portfolio positions should increase. Moreover, it may not be possible to hedge against an exchange rate or interest rate fluctuation that is so generally anticipated that we are not able to enter into a hedging transaction at an acceptable price.

The success of any hedging transactions, if any, will depend on our ability to correctly predict movements in currencies and interest rates. Therefore, while we may enter into such transactions to seek to reduce currency exchange rate and interest rate risks, unanticipated changes in interest rates may result in poorer overall investment performance than if we had not engaged in any such hedging transactions. In addition, the degree of correlation between price movements of the instruments used in a hedging strategy and price movements in the portfolio positions being hedged may vary. Moreover, for a variety of reasons, we may not seek to (or be able to) establish a perfect correlation between such hedging instruments and the portfolio holdings or credit facilities being hedged. Any such imperfect correlation may prevent us from achieving the intended hedge and expose us to risk of loss. In addition, it may not be possible to hedge fully or perfectly against currency fluctuations affecting the value of securities denominated in non-U.S. currencies because the value of those securities is likely to fluctuate as a result of factors not related to currency fluctuations. See also “— Changes in interest rates, changes in the method for determining LIBOR and the potential replacement of LIBOR may affect our cost of capital and net investment income.”

***We are a non-diversified investment company within the meaning of the 1940 Act, and therefore have few restrictions with respect to the proportion of our assets that may be invested in securities of a single industry or issuer.***

We are classified as a non-diversified investment company within the meaning of the 1940 Act, which means that we are not limited by the 1940 Act with respect to the proportion of our assets that we may invest in securities of a single industry or issuer, excluding limitations on investments in other investment companies. To the extent that we assume large positions in the securities of a small number of industries or issuers, our NAV may fluctuate to a greater extent than that of a diversified investment company as a result of changes in the financial condition or the market’s assessment of the security, industry or issuer. We may also be more susceptible to any single economic or regulatory occurrence than a diversified investment company. Beyond RIC diversification requirements, we will not have fixed guidelines for diversification, and our investments could be concentrated in relatively few industries or issuers.

***We have not yet identified most of the portfolio companies we will invest in using the proceeds of this offering.***

We have not yet identified most of the portfolio investments that we will acquire with the proceeds of this offering. We have significant flexibility in investing the net proceeds of this offering and any future offering, and may do so in a way with which you may not agree. Additionally, our Adviser will select our investments subsequent to the closing of this offering, and our stockholders will have no input with respect to such investment decisions. Further, other than general limitations that may be included in a future credit facility, the holders of our debt securities will generally not have veto power or a vote in approving any changes to our investment or operational policies. These factors increase the uncertainty, and thus the risk, of investing in our common stock. In addition, pending such investments, we will invest the net proceeds from this offering primarily in high-quality, short-term debt securities, consistent with our BDC election and our election to be taxed as a RIC, at yields significantly below the returns which we expect to achieve when our portfolio is fully invested in securities meeting our investment objective. If we are not able to identify or gain access to suitable investments, our income may be limited.

*We may enter into total return swap agreements which expose us to certain risks, including market risk, liquidity risk and other risks similar to those associated with the use of leverage.*

We may enter into a total return swap (“TRS”) directly or through a wholly-owned financing subsidiary. A TRS is a contract in which one party agrees to make periodic payments to another party based on the change in the market value of the assets underlying the TRS, which may include a specified security, basket of securities or securities indices during a specified period, in return for periodic payments based on a fixed or variable interest rate. A TRS effectively adds leverage to a portfolio by providing investment exposure to a security or market without owning or taking physical custody of such security or investing directly in such market. Because of the unique structure of a TRS, a TRS often offers lower financing costs than are offered through more traditional borrowing arrangements.

A TRS may enable us to obtain the economic benefit of owning assets subject to the TRS, without actually owning them, in return for an interest type payment to the counterparty. As such, the TRS would be analogous to us borrowing funds to acquire assets and incurring interest expense to a lender.

A TRS is subject to market risk, liquidity risk and risk of imperfect correlation between the value of the TRS and the assets underlying the TRS. In addition, we may incur certain costs in connection with a TRS that could in the aggregate be significant.

A TRS is also subject to the risk that a counterparty will default on its payment obligations thereunder or that we will not be able to meet our obligations to the counterparty. We may be required to post cash collateral amounts to secure our obligations to the counterparty under a TRS. The counterparty, however, may not be required to collateralize any of its obligations to us under a TRS. We would bear the risk of depreciation with respect to the value of the assets underlying a TRS and may be required under the terms of a TRS to post additional collateral on a dollar-for-dollar basis in the event of depreciation in the value of the underlying assets after such value decreases below a specified amount. The amount of collateral required to be posted by us would be determined primarily on the basis of the aggregate value of the underlying assets.

If the counterparty chooses to exercise its termination rights under a TRS, it is possible that, because of adverse market conditions existing at the time of such termination, we will owe more to the counterparty (or will be entitled to receive less from the counterparty) than we would otherwise have if we controlled the timing of such termination.

In addition, because a TRS is a form of synthetic leverage, such arrangements are subject to risks similar to those associated with the use of leverage. See “—Risks Related to Our Use of Leverage and Credit Facilities” above.

The fair value of a TRS, which will not necessarily equal the notional value of such TRS, will be included in our calculation of gross assets for purposes of computing the base management fee. For purposes of computing the Incentive Fee on Income and the Incentive Fee on Capital Gains, the calculation methodology will look through any TRS as if we owned the reference assets directly. See “Investment Advisory Agreement — Overview of Our Investment Adviser — Management Fee.”

For purposes of the asset coverage ratio test applicable to the Company as a BDC, the Company treats the outstanding notional amount of a TRS, less the initial amount of any cash collateral required to be posted by the Company or its wholly-owned financing subsidiary under the TRS, as a senior security for the life of that instrument. The Company may, however, accord different treatment to a TRS in the future in accordance with any applicable new rules or interpretations adopted by the SEC or its staff. In particular, the Company’s treatment of a TRS may be impacted by the recently adopted SEC rule regarding derivatives use by a BDC, as described below.

Further, for purposes of Section 55(a) under the 1940 Act, the Company treats each loan underlying a TRS as a qualifying asset if the obligor on such loan is an eligible portfolio company and as a non-qualifying asset if the obligor is not an eligible portfolio company. The Company may, however, accord different treatment to a TRS in the future in accordance with any applicable new rules or interpretations adopted by the SEC or its staff. In particular, the Company’s treatment of a TRS may be impacted by the recently adopted SEC rule regarding derivatives use by a BDC, as described below.



***Our ability to enter into transactions involving derivatives and financial commitment transactions may be limited, among other reasons, because of the unwillingness or inability of certain financial institutions to transact with cannabis-related companies such as ourselves.***

In November 2020, the SEC adopted a rulemaking regarding the ability of a BDC (or a registered investment company) to use derivatives and other transactions that create future payment or delivery obligations. Under the newly adopted rules, BDCs that use derivatives will be subject to a value-at-risk leverage limit, a derivatives risk management program and testing requirements and requirements related to board reporting. These new requirements will apply unless the BDC qualifies as a “limited derivatives user,” as defined under the adopted rules. Under the new rule, a BDC may enter into an unfunded commitment agreement that is not a derivatives transaction, such as an agreement to provide financing to a portfolio company, if the BDC has, among other things, a reasonable belief, at the time it enters into such an agreement, that it will have sufficient cash and cash equivalents to meet its obligations with respect to all of its unfunded commitment agreements, in each case as it becomes due. Collectively, these requirements may limit our ability to use derivatives and/or enter into certain other financial contracts.

Our ability to enter into derivatives transactions may be limited because of the unwillingness or inability of certain financial institutions to transact with cannabis-related companies such as ourselves.

***The health and wellness sector is highly regulated and competitive.***

The health and wellness sector is highly regulated, and the production, packaging, labeling, advertising, distribution, licensing and/or sale of health and wellness products and services may be subject to regulation by several U.S. federal agencies, including the U.S. Food and Drug Administration (the “FDA”), the Federal Trade Commission, the Consumer Product Safety Commission, and the Environmental Protection Agency, as well as various state, local and international laws and agencies of the localities in which such products and services are offered or are sold. Government regulations may prevent or delay the introduction or require design modifications of these products. Regulatory authorities may not accept the evidence of safety presented for existing or new products or services that a health and wellness company may wish to market, or they may determine that a particular product or service presents an unacceptable health risk. If health and wellness companies are unable to obtain regulatory approval or fail to comply with these regulatory requirements, the financial condition of such companies could be adversely affected.

There can be no assurance that future changes in government regulation will not adversely affect health and wellness companies. The health and wellness sector is highly competitive and an emerging health and wellness company may be unable to compete effectively. Health and wellness companies are particularly susceptible to unfavorable publicity or client rejection of products, which could reduce sales of products or services. Safety, quality and efficacy standards are extremely important for health and wellness companies. If a health and wellness company fails to meet these standards, its reputation could be damaged, it could lose customers, and its revenue and results of operations could decline.

#### **Risks Relating to the Cannabis and Hemp Industries**

***Risks related to the cannabis industry may directly or indirectly affect us or our portfolio companies engaged in the cannabis industry.***

Investing in portfolio companies involved in the cannabis industry subjects us to the following risks:

- The cannabis industry is extremely speculative and raises a host of legality issues, making it subject to inherent risk;
- The manufacture, distribution, sale, or possession of cannabis that is not in compliance with the U.S. Controlled Substances Act is illegal under U.S. federal law. Strict enforcement of U.S. federal laws regarding cannabis would likely result in our portfolio companies’ inability to execute a business plan in the cannabis industry, and could result in the loss of all or part of any of our loans;

- The Biden Administration's or specifically the U.S. Department of Justice's change in policies or enforcement with respect to U.S. federal cannabis laws could negatively impact our portfolio companies' ability to pursue their prospective business operations and/or generate revenues;
- U.S. federal courts may refuse to recognize the enforceability of contracts pertaining to any business operations that are deemed illegal under U.S. federal law, including cannabis companies operating legally under state law;
- Consumer complaints and negative publicity regarding cannabis-related products and services could lead to political pressure on states to implement new laws and regulations that are adverse to the cannabis industry, to not modify existing, restrictive laws and regulations, or to reverse current favorable laws and regulations relating to cannabis;
- Assets collateralizing loans to cannabis businesses may be forfeited to the U.S. federal government in connection with government enforcement actions under U.S. federal law;
- U.S. Food and Drug Administration regulation of cannabis and the possible registration of facilities where cannabis is grown could negatively affect the cannabis industry, which could directly affect our financial condition and the financial condition of our portfolio companies;
- Due to our proposed strategy of investing in portfolio companies engaged in the regulated cannabis industry, our portfolio companies may have a difficult time obtaining the various insurance policies that are needed to operate such businesses, which may expose us and our portfolio companies to additional risks and financial liabilities;
- The cannabis industry may face significant opposition from other industries that perceive cannabis products and services as competitive with their own, including but not limited to the pharmaceutical industry, adult beverage industry and tobacco industry, all of which have powerful lobbying and financial resources;
- Many national and regional banks have been resistant to doing business with cannabis companies because of the uncertainties presented by federal law and, as a result, we or our portfolio companies may have difficulty borrowing from or otherwise accessing the service of banks, which may inhibit our ability to open bank accounts or otherwise utilize traditional banking services;
- Due to our proposed strategy of investing in portfolio companies engaged in the regulated cannabis industry, we or our portfolio companies may have a difficult time obtaining financing in connection with our investment strategy; and
- Laws and regulations affecting the regulated cannabis industry are varied, broad in scope and subject to evolving interpretations, and may restrict the use of the properties our portfolio companies acquire or require certain additional regulatory approvals, which could materially adversely affect our investments in such portfolio companies.

Any of the foregoing could have an adverse impact on our and our portfolio companies' businesses, financial condition and results of operations.

***Cannabis, except for hemp, is currently illegal under U.S. federal law and in other jurisdictions, and strict enforcement of federal laws would likely result in our inability to execute our business plan.***

The ability of our portfolio companies to achieve their business objectives will be contingent, in part, upon the legality of the cannabis industry, their compliance with regulatory requirements enacted by various governmental authorities, and their obtaining all necessary regulatory approvals. The laws and regulations governing cannabis are still developing, including in ways that we or our portfolio companies may not foresee. Any amendment to or replacement of existing laws to make them more onerous, or delays in amending or replacing existing laws to liberalize the legal possession and use of cannabis, or delays in obtaining, or the failure to obtain, any necessary regulatory approvals may significantly delay or impact negatively the markets in which our portfolio companies

operate, products and sales initiatives, and could have a material adverse effect on their and our business, liquidity, financial condition and/or results of operations.

#### *Legal status of cannabis, other than hemp*

All but three U.S. states have legalized, to some extent, cannabis for medical purposes. Thirty-six states, the District of Columbia, Puerto Rico, Guam and the U.S. Virgin Islands have legalized some form of whole-plant cannabis cultivation, sales and use for certain medical purposes (medical states). Eighteen of those states and the District of Columbia, Guam and Northern Mariana have also legalized cannabis for adults for non-medical purposes (sometimes referred to as recreational use). Eleven additional states have legalized low-tetrahydrocannabinol (“THC”)/high-CBD extracts for select medical conditions (CBD states).

Under U.S. federal law, however, those activities are illegal. The Controlled Substances Act (the “CSA”) continues to list cannabis (marijuana, but not including hemp) as a Schedule I controlled substance (i.e., deemed to have no medical value), and accordingly, the manufacture (growth), sale or possession of cannabis is federally illegal, even for personal medical purposes. It also remains federally illegal to advertise the sale of cannabis or to sell paraphernalia designed or intended primarily for use with cannabis, unless the paraphernalia is traditionally used with tobacco or authorized by federal, state or local law. Entities or persons who knowingly lease or rent a property for the purposes of manufacturing, distributing or using any controlled substances, or merely know that any of those activities are occurring on land that they control, can also be found liable under the CSA. Additionally, violating the CSA is a predicate specified unlawful activity under U.S. anti-money laundering laws.

Violations of any U.S. federal laws and regulations can result in arrests, criminal charges, forfeiture of property, significant fines and penalties, disgorgement of profits, administrative sanctions, criminal convictions and cessation of business activities, as well as civil liabilities arising from proceedings initiated by either the U.S. government or private citizens. The U.S. government could enforce the federal cannabis prohibition laws even against companies complying with state law.

The likelihood of adverse enforcement against companies complying with state cannabis laws remains uncertain. The U.S. government has not recently prosecuted any state law compliant cannabis entity, although the risk of future enforcement cannot be dismissed entirely. In 2018, then-U.S. Attorney General Jefferson Sessions rescinded the DOJ’s previous guidance (the Cole Memo) that had given federal prosecutors discretion not to enforce federal law in states that legalized cannabis, as long as the state’s legal regime adequately addressed specified federal priorities, and had authorized federal prosecutors to use their prosecutorial discretion to decide whether to prosecute state-legal adult-use cannabis activities. Since that time, U.S. Attorneys have taken no legal action against state law compliant entities, and the Biden administration is generally anticipated to formalize federal decriminalization of state legal cannabis activity.

According to the Biden campaign website: “A Biden Administration will support the legalization of cannabis for medical purposes and reschedule cannabis as a CSA Schedule II drug so researchers can study its positive and negative impacts. This will include allowing the VA to research the use of medical cannabis to treat veteran-specific health needs.” He has pledged to “decriminalize” cannabis, which may mean that the U.S. Attorney General under his administration will order U.S. Attorneys not to enforce federal cannabis prohibition against state law compliant entities and others legally transacting business with them, although there can be no assurance this will be the case.

While President Biden’s promise to decriminalize may mean that the federal government would not criminally enforce the Schedule II status against state legal entities, the implications are not entirely clear. Although the U.S. Attorney General could order federal prosecutors not to interfere with cannabis businesses operating in compliance with states’ laws, the President alone cannot legalize medical cannabis, and as states have demonstrated, legalizing medical cannabis can take many different forms. While rescheduling cannabis to CSA schedule II would ease certain research restrictions, it would not make the state medical or adult use programs federally legal. Furthermore, while industry observers are hopeful that changes in Congress, along with a Biden presidency, will increase the chances of banking reform, such as the SAFE Banking Act, we cannot provide assurances that a bill legalizing cannabis would be approved by Congress.

If it became law, the SAFE Banking Act would, among other things, provide protection from federal prosecution to banks and other financial institutions that provide financial services to state-licensed cannabis companies, which may include the provision of loans by financial institutions to such companies. If the SAFE Banking Act became law, or cannabis became legal under federal law, there would be increased competition for lending to state-licensed cannabis companies, and such companies would have greater access to financing sources with lower costs of capital. These factors may result in us having to enter into loans at lower rates, which may significantly adversely impact our profitability and our distributions to stockholders.

Since December 2014, companies strictly complying with state medical cannabis laws have also been protected against enforcement by an amendment (originally called the Rohrabacher-Farr amendment, now called the Joyce amendment) to the Omnibus Spending Bill, which prevents federal prosecutors from using federal funds to impede the implementation of medical cannabis laws enacted at the state level. Courts have interpreted the provision to bar the DOJ from prosecuting any person or entity in strict compliance with state medical cannabis laws. While the Joyce provision prevents prosecutions, it does not make cannabis legal. Accordingly, if the protection expired, prosecutors could prosecute illegal activity that occurred within the statute of limitations even if the Joyce protection was in place when the federally illegal activity occurred. The Joyce protection depends on its continued inclusion in the federal omnibus spending bill, or in some other legislation, and entities' strict compliance with the state medical cannabis laws. Furthermore, how the DOJ would enforce against an entity complying with a state's medical and adult use laws has not been resolved and is open to debate.

#### *Legal status of hemp and hemp derivatives*

Until recently, hemp (defined by the U.S. government as *Cannabis sativa* L. with a THC concentration of not more than 0.3% on a dry weight basis) and hemp's extracts (except mature stalks, fiber produced from the stalks, oil or cake made from the seeds and any other compound, manufacture, salt derivative, mixture or preparation of such parts) were illegal Schedule I controlled substances under the CSA. The Agricultural Act of 2014, Pub.L. 113-79 (the "2014 Farm Bill") authorized states to establish industrial hemp research programs. The majority of states established programs purportedly in compliance with the 2014 Farm Bill. Many industry participants and even states interpreted the law to include "research" into the commercialization of, and commercial markets for, CBD from hemp, including products containing CBD.

In December 2018, the U.S. government changed hemp's legal status. The Agriculture Improvement Act of 2018, Pub.L. 115-334 (the "2018 Farm Bill"), removed hemp and extracts of hemp, including CBD, from the CSA schedules. Accordingly, the production, sale and possession of hemp or extracts of hemp, including CBD, no longer violate the CSA. The 2018 Farm Bill did not create a system in which individuals or businesses can grow hemp whenever and wherever they want. There are numerous restrictions. The 2018 Farm Bill allows hemp cultivation under state plans approved by the U.S. Department of Agriculture ("USDA") or under USDA regulations in states that have legalized hemp but not implemented their own regulations. It also allows the transfer of hemp and hemp-derived products across state lines for commercial or other purposes, even through states that have not legalized hemp or hemp-derived products. Nonetheless, states can still prohibit hemp or limit hemp more stringently than the federal law.

Despite the passage of the 2018 Farm Bill, hemp products' legal status is complicated further by state and other federal law. The states are a patchwork of different laws on hemp and its extracts, including CBD. Additionally, the FDA claims that the Food, Drugs & Cosmetics Act (the "FDCA") significantly limits the legality of hemp-derived CBD products.

The section of the 2018 Farm Bill establishing a framework for hemp production also states explicitly that it does not affect or modify the FDCA, Section 351 of the Public Health Service Act, or the authority of the Commissioner of the FDA under those laws. Within hours of President Trump signing the 2018 Farm Bill, the FDA issued a statement reminding the public of the FDA's continued authority "to regulate products containing cannabis or cannabis-derived compounds under the [FDCA] and Section 351 of the Public Health Service Act." First, the FDA noted that "it's unlawful under the [FDCA] to introduce food containing added CBD or THC into interstate commerce, or to market CBD or THC products, as, or in, dietary supplements, regardless of whether the substances are hemp-derived," and regardless of whether health claims are made, because CBD (and THC) are active ingredients in FDA-approved drugs and became the subject of public substantial clinical investigations when GW Pharmaceuticals submitted investigational new drug ("IND") applications for Sativex and Epidiolex, both containing CBD as an active ingredient. The FDA then warned against health claims: prior to introduction into interstate commerce, any cannabis product, whether derived from hemp or otherwise, marketed with a disease claim (e.g., therapeutic benefit, disease prevention) must first be approved by the FDA for its intended use through one of the drug approval pathways. Notably, the FDA can look beyond the product's express claims to find that a product is a "drug." The definition of "drug" under the FDCA includes, in relevant part, "articles intended for use in the diagnosis, cure, mitigation, treatment, or prevention of disease in man or other animals" as well as "articles intended for use as a component of [a drug as defined in the other sections of the definition]." In determining "intended use," the FDA has traditionally looked beyond a product's label to statements made on websites, on social media or orally by the company's representatives. The FDA did acknowledge that hemp foods not containing CBD or THC (e.g., hulled hemp seeds, hemp seed protein, hemp seed oil) are legal.

Some CBD products are arguably federally legal today, notwithstanding the FDA's position. To the extent that a CBD product is outside the FDA's jurisdiction, the product is likely federally legal because CBD, unlike many drugs that the FDA regulates, is no longer listed on the CSA's schedules. CBD products other than food, beverages and supplements and not marketed as a drug, including making health claims, may fall outside of the FDA's authority. If so, some products that may be legal today include topical products such as cosmetics, massage oils, lotions and creams. Additionally, the FDA lacks authority, except in limited circumstances, to enforce against companies selling CBD products that do not enter into "interstate commerce," although the definition of interstate commerce is amorphous and may include sources of ingredients, components or even investments that in some way impact more than one state.

Enforcement under the FDCA may be criminal or civil in nature and can include those who aid and abet a violation, or conspire to violate, the FDCA. Violations of the FDCA are for first violations misdemeanors punishable by imprisonment up to one year or a fine, or both, and for second violations or violations committed with an "intent to defraud or mislead" felonies punishable by fines and imprisonment up to three years. The fines provided for are low (\$1000 and \$3000), but under the Criminal Fine Improvements Act of 1987, the criminal fines can be increased significantly (approximately \$100,000 to \$500,000). Civil remedies under the FDCA include civil money penalties, injunctions and seizures. The FDA also has a number of administrative remedies (e.g., warning letters, recalls, debarment). With respect to CBD products, the FDA so far has limited its enforcement to sending cease-and-desist letters to companies selling CBD products and making "egregious, over-the-line" claims, such as "cures cancer," "treats Alzheimer's Disease" and "treats chronic pain." Additionally, plaintiff lawyers have brought putative class actions against several companies selling CBD product, claiming that the marketing of them as legal products violates California law, although most of the cases have been stayed pending the FDA issuing promised guidelines to the industry. Since issuing the initial guidance following the 2018 Farm Bill, the FDA has sent cease-and-desist warning letters to more than twenty companies making health claims about CBD products. The Federal Trade Commission ("FTC") has also sent warning letters to companies making unsubstantiated health claims about CBD products and has even filed a lawsuit against one. The FDA's additional guidance on CBD, titled, "Cannabidiol Enforcement Policy; Draft Guidance for Industry," which the FDA has described as a "risk-based enforcement policy" to prioritize enforcement decisions, was submitted to the White House on July 22, 2020, was not formally approved by the Trump administration, and has been pulled back by the Biden Administration.

***Loans to relatively new and/or small companies and companies operating in the cannabis industry generally involve significant risks.***

We primarily provide loans to established companies operating in the cannabis industry, but because the cannabis industry is relatively new and rapidly evolving, some of these companies may be relatively new and/or small companies. Loans to relatively new and/or small companies and companies operating in the cannabis industry generally involve a number of significant risks, including, but not limited to, the following:

- these companies may have limited financial resources and may be unable to meet their obligations, which may be accompanied by a deterioration in the value of any collateral securing our loan and a reduction in the likelihood of us realizing a return on our loan;
- they typically have shorter operating histories, narrower product lines and smaller market shares than larger and more established businesses, which tend to render them more vulnerable to competitors' actions and market conditions (including conditions in the cannabis industry), as well as general economic downturns;
- they typically depend on the management talents and efforts of a small group of persons; therefore, the death, disability, resignation or termination of one or more of these persons could have a material adverse effect on such borrower and, in turn, on us;
- there is generally less public information about these companies. Unless publicly traded, these companies and their financial information are generally not subject to the regulations that govern public companies, and we may be unable to uncover all material information about these companies, which may prevent us from making a fully informed lending decision and cause us to lose money on our loans;

- they generally have less predictable operating results and may require substantial additional capital to support their operations, finance expansion or maintain their competitive position;
- we, our executive officers and directors and our Adviser may, in the ordinary course of business, be named as defendants in litigation arising from our loans to such borrowers and may, as a result, incur significant costs and expenses in connection with such litigation;
- changes in laws and regulations, as well as their interpretations, may have a disproportionate adverse effect on their business, financial structure or prospects compared to those of larger and more established companies; and
- they may have difficulty accessing capital from other providers on favorable terms or at all.

***Our investment opportunities are limited by the current illegality of cannabis under U.S. federal law; changes in the laws, regulations and guidelines that impact the cannabis industry may cause adverse effects on our ability to make investments.***

Currently, we intend to make equity investments only in portfolio companies that are compliant with all applicable laws and regulations within the jurisdictions in which they are located or operate and, in particular, we will not make an equity investment in a portfolio company that we determine has been operating, or whose business plan is to operate, in violation of U.S. federal laws, including the U.S. Controlled Substances Act. This limitation may adversely affect us by limiting the scope of our equity investment opportunities. Additionally, changes to such laws, regulations and guidelines may cause further adverse effects on our ability to identify and make an equity investment in a portfolio company that meets these legal and regulatory requirements at the time of acquisition.

On the other hand, we may make a loan to a portfolio company regardless of its status under U.S. federal law, so long as we determine based on our due diligence that the portfolio company is licensed in, and complying with, state-regulated cannabis programs. Any such loans will be designed to be compliant with all applicable laws and regulations to which we are subject, including U.S. federal law, although the law in this area is not fully settled and there can be no assurances that federal authorities will consider such loans to be compliant with applicable law and regulations. In that regard, we have received an opinion of counsel (a copy of which has been filed as an exhibit to the registration statement of which this prospectus is a part) that the proposed investment activities as described in this prospectus do not violate the U.S. Controlled Substances Act (21 U.S.C. § 801, et seq.) (the “CSA”), the U.S. Money Laundering Control Act (18 U.S.C. § 1956), or the Drug Paraphernalia law contained in the CSA, 21 U.S.C. § 863, subject to certain assumptions, qualifications and exceptions stated in the opinion. However, there can be no assurances that a court or federal authorities would agree with the conclusions reached in the opinion. Additionally, if federal legislation is enacted that provides protections from liability under U.S. federal law for other types of investments in portfolio companies that are compliant with state, but not U.S. federal, laws and is determined to apply to us (or we otherwise determine that the investment is not prohibited), we may make other types of investments in portfolio companies that do not comply with U.S. federal laws. There can be no assurance, however, that such type of legislation will be enacted or that we will otherwise be able to invest in portfolio companies that do not comply with U.S. federal law.

***The nascent status of the medical and recreational cannabis industry involves unique circumstances and there can be no assurance that the industry will continue to exist or grow as currently anticipated.***

Cannabis industry businesses operate under a relatively new medical and adult-use recreational market. In addition to being subject to general business risks, a business involving an agricultural product and a regulated consumer product needs to continue to build brand, product awareness and operations through significant investments in strategy, production capacity, quality assurance and compliance with regulations.

Competitive conditions, consumer tastes, patient requirements and spending patterns in this new industry and market are not well understood and may have unique circumstances that differ from existing industries and markets.

There can be no assurance that this industry and market will continue to exist or grow as currently estimated or anticipated, or function and evolve in a manner consistent with our expectations and assumptions. Any event or circumstance that affects the medical or recreational cannabis industry and market could have a material adverse effect on our business, financial condition and results of operations, as well as the business, financial condition and results of operations of portfolio companies.

***Any potential growth in the cannabis industry continues to be subject to new and changing state and local laws and regulations.***

Continued development of the cannabis industry is dependent upon continued legislative legalization of cannabis at the state level, and a number of factors could slow or halt progress in this area, even where there is

public support for legislative action. Any delay or halt in the passing or implementation of legislation legalizing cannabis use, or its cultivation, manufacturing, processing, transportation, distribution, storage and/or sale, or the re-criminalization or restriction of cannabis at the state level, could negatively impact our business and the business of our portfolio companies. Additionally, changes in applicable state and local laws or regulations, including zoning restrictions, permitting requirements and fees, could restrict the products and services our portfolio companies may offer or impose additional compliance costs on such portfolio companies. Violations of applicable laws, or allegations of such violations, could disrupt our portfolio companies' businesses and result in a material adverse effect on their operations. We cannot predict the nature of any future laws, regulations, interpretations or applications, and it is possible that regulations may be enacted in the future that will be materially adverse to the business of our portfolio companies, as well as our business.

***Change in the laws, regulations and guidelines that impact our portfolio companies' businesses may cause adverse effects on operations.***

A cannabis products business will be subject to a variety of laws, regulations and guidelines relating to the marketing, acquisition, manufacture, management, transportation, storage, sale, labeling and disposal of cannabis as well as laws and regulations relating to health and safety, the conduct of operations and the protection of the environment. Changes to such laws, regulations and guidelines may cause adverse effects on the operations of our portfolio companies, which could cause adverse effects on our business.

***Portfolio companies operating in a highly regulated business will require significant resources.***

In the event we invest in a portfolio company involved in the production, distribution or sale of cannabis products, such portfolio company will be operating in a highly regulated business. In such a case, we would expect a significant amount of such portfolio company's management's time and external resources to be used to comply with the laws, regulations and guidelines that impact their business, and changes thereto, and such compliance may place a significant burden on such management and other resources of a portfolio company.

***Differing regulatory environments may cause adverse effects on our or our portfolio companies' operations.***

A cannabis products business will be subject to a variety of laws, regulations and guidelines in each of the jurisdictions in which it operates. Complying with multiple regulatory regimes will require additional resources and may limit a portfolio company's ability to expand into certain jurisdictions, even where cannabis may be legal. For example, even if cannabis were to become legal under U.S. federal law, companies operating in the cannabis industry would have to comply with applicable state and local laws, which may vary greatly between jurisdictions, increasing costs for companies that operate in multiple jurisdictions.

***We may invest in a portfolio company that is involved in a highly regulated business and any failure or significant delay in obtaining regulatory approvals could adversely affect the ability of portfolio companies to conduct their businesses.***

In the event we invest in a portfolio company involved in the production, distribution or sale of cannabis products, achievement of such portfolio company's business objectives will be contingent, in part, upon compliance with the regulatory requirements enacted by applicable government authorities and obtaining all regulatory approvals, where necessary, for the sale of their products. We cannot predict the time required to secure all appropriate regulatory approvals for such products, additional restrictions that may be placed on our portfolio company's business or the extent of testing and documentation that may be required by government authorities. Any delays in obtaining, or failure to obtain, regulatory approvals would significantly delay the development of markets and products and could have a material adverse effect on the business, results of operation and financial condition of any such portfolio company, or on our business, results of operations and financial condition.

The ability of our portfolio companies to access financing or engage in derivatives transactions may be limited because of the unwillingness or inability of certain financial institutions to transact with companies that operate in the cannabis industry.

***U.S. regulations and enforcement relating to hemp-derived CBD products are rapidly evolving.***

We may invest in a business involved in the production, distribution or sale of hemp-derived CBD products. Although the passage of the 2018 Farm Bill legalized the cultivation of hemp in the United States to produce products containing CBD and other non-THC cannabinoids, it is unclear how the FDA will respond to the approach taken by a portfolio company, or whether the FDA will propose or implement new or additional regulations. In addition, such products may be subject to regulation at the state or local levels. Unforeseen regulatory obstacles may hinder such portfolio company's ability to successfully compete in the market for such products.

***Marketing constraints under regulatory frameworks may limit a portfolio company's ability to compete for market share in a manner similar to that of companies in other industries.***

The development of a portfolio company's business and operating results may be hindered by applicable restrictions on sales and marketing activities imposed by regulations applicable to the cannabis industry. For example, the regulatory environment in Canada would limit a portfolio company's ability to compete for market share in a manner similar to that of companies in other industries. Additionally, Canadian regulations impose further packaging, labeling and advertising restrictions on producers in the adult-use recreational cannabis market. If a portfolio company is unable to effectively market its products and compete for market share, or if the costs of compliance with government legislation and regulation cannot be absorbed through increased selling prices for its products, its sales and operating results could be adversely affected, which could impact our business, results of operations and financial condition.

***Portfolio companies may become involved in regulatory or agency proceedings, investigations and audits.***

Businesses in the cannabis industry, and the business of the suppliers from which portfolio companies may acquire the products they may sell, require compliance with many laws and regulations. Failure to comply with these laws and regulations could subject our portfolio companies or such suppliers to regulatory or agency proceedings or investigations and could also lead to damage awards, fines and penalties. Our portfolio companies or such suppliers may become involved in a number of government or agency proceedings, investigations and audits. The outcome of any regulatory or agency proceedings, investigations, audits and other contingencies could harm our reputation, the reputations of our portfolio companies or the reputations of the brands that they may sell, require the portfolio companies to take, or refrain from taking, actions that could harm their operations, or require them to pay substantial amounts of money, harming their and our financial condition. There can be no assurance that any pending or future regulatory or agency proceedings, investigations and audits will not result in substantial costs or a diversion of portfolio company management's attention and resources or have a material adverse impact on their and our business, financial condition and results of operations.

***Research in the United States, Canada and internationally regarding the medical benefits, viability, safety, efficacy and dosing of cannabis or isolated cannabinoids remains in relatively early stages. There have been few clinical trials on the benefits of cannabis or isolated cannabinoids conducted.***

Research in the United States, Canada and internationally regarding the medical benefits, viability, safety, efficacy and dosing of cannabis or isolated cannabinoids (such as CBD and THC) remains in relatively early stages. Historically stringent regulations related to cannabis have made conducting medical and academic studies challenging, and there have been relatively few clinical trials on the benefits of cannabis or isolated cannabinoids to date. Many statements concerning the potential medical benefits of cannabinoids are based on published articles and reports, and as a result, such statements are subject to the experimental parameters, qualifications and limitations in the studies that have been completed. In the event we invest in a portfolio company involving medical cannabis, future research and clinical trials may draw different or negative conclusions regarding the medical benefits, viability, safety, efficacy, dosing or other facts and perceptions related to medical cannabis, which could adversely affect social acceptance of cannabis and the demand for their products. Such portfolio companies may be subject to liability for risks against which they cannot insure or against which they may elect not to insure due to the high cost of insurance premiums or other factors. Payment of liabilities for which such portfolio companies do not carry insurance may have a material adverse effect on their financial position and operations. The payment of any such liabilities would reduce the funds available for their normal business activities, which could affect our business, financial condition and results of operations.



***With respect to portfolio companies operating in the medical and adult-use cannabis markets, the illicit supply of cannabis and cannabis-based products may reduce such sales and impede such company's ability to succeed in such markets.***

In the event we invest in a portfolio company operating in the medical and adult-use cannabis markets, such portfolio company may face competition from unlicensed and unregulated market participants, including illegal dispensaries and black market suppliers selling cannabis and cannabis-based products.

Even with the legalization of medical and adult-use cannabis in certain jurisdictions, black market operations remain abundant and are a substantial competitor to cannabis-related businesses. In addition, illegal dispensaries and black market participants may be able to (i) offer products with higher concentrations of active ingredients that are either expressly prohibited or impracticable to produce under applicable regulations, (ii) use delivery methods, including edibles, concentrates and extract vaporizers, that may be prohibited from being offered to individuals in such jurisdictions, (iii) brand products more explicitly, and (iv) describe/discuss intended effects of products. As these illicit market participants do not comply with the regulations governing the medical and adult-use cannabis industry in such jurisdictions, their operations may also have significantly lower costs.

As a result of the competition presented by the black market for cannabis, any unwillingness by consumers currently utilizing these unlicensed distribution channels to begin purchasing from legal producers for any reason or any inability or unwillingness of law enforcement authorities to enforce laws prohibiting the unlicensed cultivation and sale of cannabis and cannabis-based products could (i) result in the perpetuation of the black market for cannabis, (ii) adversely affect our portfolio companies' market share and (iii) adversely impact the public perception of cannabis use and licensed cannabis producers and dealers, all of which would have a materially adverse effect on our and our portfolio companies' business, operations and financial condition.

***If recreational or medical-use consumers elect to produce cannabis for their own purposes, it could reduce the addressable market for a portfolio company's products.***

Cannabis regulations may permit the end user to produce cannabis for their own purposes. For example, under cannabis regulations in Canada, three options are available for an individual to obtain cannabis for medical purposes: (i) registering with a holder of a license to sell for medical purposes and purchasing products from that entity; (ii) register with Health Canada to produce a limited amount of cannabis for their own medical purposes; or (iii) designate someone else to produce cannabis for them. It is possible that the ability of an end user to produce cannabis for their own purposes, such as under (ii) and (iii) above, could significantly reduce the addressable market for a portfolio company's products and could materially and adversely affect the business, financial condition and results of operations of a portfolio company, which in turn, could adversely affect our business, financial condition and results of operations.

***The cannabis industry faces significant opposition, and any negative trends may adversely affect the business operations of our portfolio companies.***

If we invest in portfolio companies in the cannabis industry, we will be substantially dependent on the continued market acceptance, and the proliferation of consumers, of cannabis. We believe that with further legalization, cannabis will become more accepted, resulting in growth in consumer demand. However, we cannot predict the future growth rate or future market potential, and any negative outlook on the cannabis industry may adversely affect our business operations and the operations of our portfolio companies.

Large, well-funded industries that perceive cannabis products and services as competitive with their own, including but not limited to the pharmaceutical industry, adult beverage industry and tobacco industry, all of which have powerful lobbying and financial resources, may have strong economic reasons to oppose the development of the cannabis industry. For example, should cannabis displace other drugs or products, the medical cannabis industry could face a material threat from the pharmaceutical industry, which is well-funded and possesses a strong and experienced lobby. Any inroads the pharmaceutical, or any other potentially displaced, industry or sector could make in halting or impeding the cannabis industry could have a detrimental impact on our business and the business of our portfolio companies.

***Competition from synthetic products may adversely affect the business, financial condition or results of operations of a portfolio company.***

The pharmaceutical industry may attempt to dominate the cannabis industry, and in particular, legal cannabis, through the development and distribution of synthetic products which emulate the effects of cannabis. If they are successful, the widespread popularity of such synthetic products could change the demand, volume and profitability of the cannabis industry. This could adversely affect the ability of a portfolio company to secure long-term profitability and success through the sustainable and profitable operation of the anticipated businesses and investment targets, and could have a material adverse effect on a portfolio company's business, financial condition or results of operations, which in turn, could adversely affect our business, financial condition and results of operations.

***An initial surge in demand for cannabis may result in supply shortages in the short term, while in the longer term, supply of cannabis could exceed demand, which may cause a fluctuation in revenue.***

Changes in the legal status of cannabis may result in an initial surge in demand. As a result of such initial surge, cannabis companies operating under such changed legal regime may not be able to produce enough cannabis to meet demand of the adult-use recreational and medical markets, as applicable. This may result in lower than expected sales and revenues and increased competition for sales and sources of supply.

However, in the future, cannabis producers may produce more cannabis than is needed to satisfy the collective demand of the adult-use recreational and medical markets, as applicable, and they may be unable to export that oversupply into other markets where cannabis use is fully legal under all applicable jurisdictional laws. As a result, the available supply of cannabis could exceed demand, resulting in a significant decline in the market price for cannabis. If such supply or price fluctuations were to occur, companies operating in the cannabis industry may see revenue and profitability fluctuate materially and their business, financial condition, results of operations and prospects may be adversely affected, as could our business, financial condition and results of operations.

***Consumer preferences may change, and the portfolio company may be unsuccessful in acquiring or retaining consumers and keeping pace with changing market developments.***

As a result of changing consumer preferences, many consumer products attain financial success for a limited period of time. Even if a portfolio company's products find success at retail, there can be no assurance that such products will continue to be profitable. A portfolio company's success will be significantly dependent upon its ability to develop new and improved product lines and adapt to consumer preferences. Even if a portfolio company is successful in introducing new products or developing its current products, a failure to gain consumer acceptance or to update products could cause a decline in the products' popularity and impair the brands. In addition, a portfolio company may be required to invest significant capital in the creation of new product lines, strains, brands, marketing campaigns, packaging and other product features, none of which are guaranteed to be successful. Failure to introduce new features and product lines and to achieve and sustain market acceptance could result in the portfolio company being unable to satisfy consumer preferences and generate revenue.

A portfolio company's success depends on its ability to attract and retain consumers. There are many factors which could impact its ability to attract and retain consumers, including its ability to continually produce desirable and effective products, the successful implementation of its consumer acquisition plan and the continued growth in the aggregate number of potential consumers. A portfolio company may not be successful in developing effective and safe new products, anticipating shifts in social trends and consumer demands, bringing such products to market in time to be effectively commercialized, or obtaining any required regulatory approvals. A portfolio company's failure to acquire and retain consumers could have a material adverse effect on the business of the portfolio company and us.

In addition, the patterns of cannabis consumption may shift over time due to a variety of factors, including changes in demographics, social trends, public health policies and other leisure or consumption behaviors. If consumer preferences for a portfolio company's products or cannabis products in general do not develop, or if once developed, they were to move away from its products or cannabis products in general, or if a portfolio company is unable to anticipate and respond effectively to shifts in consumer behaviors, it may be adversely affected.

***The cannabis industry is highly competitive and evolving.***

The market for businesses in the cannabis industry is highly competitive and evolving. There may be no material aspect of our portfolio companies' businesses that is protected by patents, copyrights, trademarks or trade names, and they may face strong competition from larger companies, including those that may offer similar products and services to our portfolio companies. Potential competitors may have longer operating histories, significantly greater financial, marketing or other resources, and larger client bases than our portfolio companies, and there can be no assurance that they will be able to successfully compete against these or other competitors. Additionally, because the cannabis industry is at an early stage, a portfolio company may face additional competition from new entrants, including as a result of an increased number of licenses granted under any applicable regulatory regime.

If the number of users of medical cannabis increases, and/or if the national demand for recreational cannabis increases, the demand for products will increase and we expect that competition will become more intense, as current and future competitors begin to offer an increasing number of diversified products. To remain competitive, a portfolio company may require a continued high level of investment in research and development, marketing, sales and client support. However, a portfolio company may not have sufficient resources to maintain research and development, marketing, sales and client support efforts on a competitive basis, which could materially and adversely affect the business, financial condition and results of operations of such portfolio company, as well as our business, financial condition and results of operations. Additionally, as new technologies related to the cultivation, processing, manufacturing, and research and development of cannabis are being explored, there is potential for third-party competitors to be in possession of superior technology that would reduce any relative competitiveness a portfolio company may have.

As the legal landscape for cannabis continues to evolve, it is possible that the cannabis industry will undergo consolidation, creating larger companies with greater financial resources, manufacturing and marketing capabilities, and product offerings. Given the rapid changes affecting the global, national and regional economies generally, and the cannabis industry in particular, our portfolio companies may not be able to create and maintain a competitive advantage in the marketplace.

The success of any such portfolio company will depend on its ability to keep pace with any changes in such markets, particularly legal and regulatory changes. For example, it is likely that a portfolio company, and its competitors, will seek to introduce new products in the future. The success of such portfolio companies will also depend on their ability to respond to, among other things, changes in the economy, market conditions and competitive pressures. Any failure by them to anticipate or respond adequately to such changes could have a material adverse effect on the financial condition and results of operations of us and our portfolio companies.

***The technologies, process and formulations a portfolio company uses may face competition or become obsolete.***

Many businesses in the cannabis industry face rapidly changing markets, technology, emerging industry standards and frequent introduction of new products. The introduction of new products embodying new technologies, including new manufacturing processes or formulations, and the emergence of new industry standards may render a portfolio company's products obsolete, less competitive or less marketable. The process of developing their products is complex and requires significant continuing costs, development efforts and third-party commitments, including licensees, researchers, collaborators and lenders. A portfolio company's failure to develop new technologies and products and the obsolescence of existing technologies or processes could adversely affect its and our business, financial condition and results of operations. A portfolio company may be unable to anticipate changes in its customer requirements that could make its existing technology, processes or formulations obsolete. Its success will depend in part on its ability to continue to enhance its existing technologies, develop new technology that addresses the increasing sophistication and varied needs of the market, and respond to technological advances and emerging industry standards and practices on a timely and cost-effective basis. The development of its proprietary technology, processes and formulations may entail significant technical and business risks. A portfolio company may not be successful in using its new technologies or exploiting its niche markets effectively or adapting its business to evolving customer or medical requirements or preferences or emerging industry standards.

***There is uncertainty in pricing and demand for cannabis-based products.***

The anticipated pricing of cannabis products may differ substantially from current levels given changes in the competitive and regulatory landscape. A portfolio company's business model may be susceptible to erosion of profitability should cannabis and cannabis-related products experience secular pricing changes. Potential sources of pricing changes include overproduction, regulatory action, increased competition or the emergence of new competitors. Additionally, even if pricing of the broader cannabis and cannabis-related product market is sustained, there is no guarantee that a portfolio company will be successful in creating and maintaining consumer demand and estimated pricing levels. To do this, the portfolio company may be dependent upon, among other things, continually producing desirable and effective cannabis and cannabis-related products and the continued growth in the aggregate number of cannabis consumers. Campaigns designed to enhance a portfolio company's brand and attract consumers, subject to restrictions imposed by law, can be expensive and may not result in increased sales. If the portfolio company is unable to attract new consumers, it may not be able to increase its sales.

***A portfolio company may have difficulty in forecasting sales and other business metrics.***

A portfolio company may rely largely on its own market research to forecast sales as detailed forecasts are not generally obtainable from other sources at this early stage of the cannabis industry. If the portfolio company underestimates the demand for its products, it may not be able to produce products that meet its stringent requirements, and this could result in delays in the shipment of products and failure to satisfy demand, as well as damage to reputation and partner relationships. If the portfolio company overestimates the demand for its products, it could face inventory levels in excess of demand, which could result in inventory write-downs or write-offs and the sale of excess inventory at discounted prices, which would harm the portfolio company's gross margins and brand management efforts, which could impact our business, results of operations and financial condition.

Due to the nascent nature of the market, it could be difficult for the portfolio company to forecast demand. In particular, it could be difficult to forecast the rate of the illicit cannabis market crossing over to the legal market. If the market does not develop as the portfolio company expects, it could have a material adverse effect on its business, results of operations and financial condition, which could in turn have an adverse effect on our business, results of operations and financial condition. In addition to inherent risks and difficulties forecasting sales, anticipated costs and yields are also challenging to predict with certainty as the cannabis industry is in its relative infancy and rapidly evolving. If portfolio companies make capital investments based on flawed sales, costs and yields forecasts, the portfolio company may not achieve its expected, or any, return on invested capital. Failure to realize forecasted sales, costs and yields could have a material adverse effect on the portfolio company's business, results of operations and financial condition, as well as our business, results of operations and financial condition.

***Portfolio companies may have difficulty borrowing from or otherwise accessing the service of banks, which may make it difficult to sell products and services.***

Financial transactions involving proceeds generated by cannabis-related conduct can form the basis for prosecution under the federal money laundering statutes, the unlicensed money transmitter statute and the U.S. Bank Secrecy Act. Guidance issued by the Financial Crimes Enforcement Network ("FinCEN"), a division of the U.S. Department of the Treasury (the "FinCEN Memo"), clarifies how financial institutions can provide services to cannabis-related businesses consistent with their obligations under the Bank Secrecy Act. Despite the rescission of memoranda that had de-prioritized the enforcement of federal law against marijuana users and businesses that comply with state marijuana laws, FinCEN has not rescinded the FinCEN Memo. While this memo appears to be a standalone document and is presumptively still in effect, FinCEN could elect to rescind the FinCEN Memo at any time. Banks remain hesitant to offer banking services to cannabis-related businesses. Consequently, those businesses involved in the cannabis industry continue to encounter difficulty in establishing banking relationships. The inability of portfolio companies to maintain bank accounts would make it difficult for them to operate their business, would increase their operating costs and pose additional operational, logistical and security challenges, and could result in their inability to implement their business plan.

***The development and operation of businesses in the cannabis industry may require additional financing, which may not be available on favorable terms, if at all.***

Due to the growth in the cannabis industry, the continued development and operation of businesses in the cannabis industry may require additional financing. The failure of portfolio companies to raise such capital could result in the delay or indefinite postponement of current business objectives or the cessation of business. There can

be no assurance that additional capital or other types of financing will be available if needed or that, if available, the terms of such financing will be favorable.

***Portfolio companies may be subject to product liability claims.***

If we invest in a portfolio company operating as a manufacturer and distributor of products utilizing cannabis for human consumption, such portfolio companies will face an inherent risk of exposure to product liability claims, regulatory action and litigation if their products are alleged to have caused significant loss or injury. In addition, the manufacture and sale of cannabis products involve the risk of injury to consumers due to tampering by unauthorized third-parties or product contamination. Previously unknown adverse reactions resulting from human consumption of cannabis products alone or in combination with other medications or substances could occur. Our portfolio companies may be subject to various product liability claims, including, among others, that the products they produced caused injury or illness, include inadequate instructions for use or include inadequate warnings concerning possible side effects or interactions with other substances.

A product liability claim or regulatory action against a portfolio company could result in increased costs, could adversely affect its reputation with its clients and consumers generally, and could have a material adverse effect on its results of operations and financial condition, which in turn could adversely affect our results of operations and financial condition. There can be no assurances that a portfolio company will be able to obtain or maintain product liability insurance on acceptable terms or with adequate coverage against potential liabilities. Such insurance is expensive and may not be available in the future on acceptable terms, or at all. The inability to obtain sufficient insurance coverage on reasonable terms or to otherwise protect against potential product liability claims could prevent or inhibit the commercialization of products.

***Portfolio companies may not be able to obtain adequate insurance coverage in respect of the risks such business faces, the premiums for such insurance may not continue to be commercially justifiable or there may be coverage limitations and other exclusions which may result in such insurance not being sufficient to cover potential liabilities that they face.***

Although we expect our portfolio companies to have insurance coverage with respect to the assets and operations of their businesses, such insurance coverage will be subject to coverage limits and exclusions and may not be available for the risks and hazards to which they are exposed. In addition, no assurance can be given that such insurance will be adequate to cover their liabilities, including potential product liability claims, or will be generally available in the future or, if available, that premiums will be commercially justifiable. If a portfolio company were to incur substantial liability and such damages were not covered by insurance or were in excess of policy limits, such portfolio company may be exposed to material uninsured liabilities that could impede such company's liquidity, profitability or solvency, potentially impacting our results of operations and financial condition.

***Due to our involvement in the regulated cannabis industry, we and our borrowers may have a difficult time obtaining or maintaining the various insurance policies that are desired to operate our business, which may expose us to additional risk and financial liabilities.***

Insurance that is otherwise readily available, such as workers' compensation, general liability, title insurance and directors' and officers' insurance, is more difficult for us and our borrowers to find and more expensive, because of our borrowers' involvement in the regulated cannabis industry. There are no guarantees that we or our borrowers will be able to find such insurance now or in the future, or that such insurance will be available on economically viable terms. If we or our borrowers are forced to go without such insurance, it may prevent us from entering into certain business sectors, may inhibit our growth, may expose us to additional risk and financial liabilities and, in the case of an uninsured loss, may result in the loss of anticipated cash flow or the value of our loan.

***We, portfolio companies or the cannabis industry more generally may receive unfavorable publicity or become subject to negative consumer or investor perception.***

We believe that the cannabis industry is highly dependent upon positive consumer and investor perception regarding the benefits, safety, efficacy and quality of the cannabis distributed to consumers. The perception of the cannabis industry and cannabis products, currently and in the future, may be significantly influenced by scientific

research or findings, regulatory investigations, litigation, political statements, media attention and other publicity (whether or not accurate or with merit) both in the United States and in other countries, including Canada, relating to the consumption of cannabis products, including unexpected safety or efficacy concerns arising with respect to cannabis products or the activities of industry participants. There can be no assurance that future scientific research, findings, regulatory proceedings, litigation, media attention, or other research findings or publicity will be favorable to the cannabis market or any particular cannabis product or will be consistent with earlier publicity. Adverse future scientific research reports, findings and regulatory proceedings that are, or litigation, media attention or other publicity that is, perceived as less favorable than, or that questions, earlier research reports, findings or publicity (whether or not accurate or with merit) could result in a significant reduction in the demand for the cannabis products of a portfolio company. Further, adverse publicity reports or other media attention regarding the safety, efficacy and quality of cannabis, or the products of a portfolio company specifically, or associating the consumption of cannabis with illness or other negative effects or events, could adversely affect such portfolio company. This adverse publicity could arise even if the adverse effects associated with cannabis products resulted from consumers' failure to use such products legally, appropriately or as directed.

***Third-parties with whom we do business may perceive themselves as being exposed to reputational risk by virtue of their relationship with us and may ultimately elect not to do business with us.***

If we invest in a portfolio company in the cannabis industry, the parties with which we do business may perceive that they are exposed to reputational risk as a result of our investment in a cannabis business. Failure to establish or maintain business relationships could have a material adverse effect on us.

***Our reputation and ability to do business, as well as the reputation of our portfolio companies and their ability to do business, may be negatively impacted by the improper conduct of business partners, employees or agents.***

We cannot provide assurance that the internal controls and compliance systems of our portfolio companies will always protect us from acts committed by such companies' employees, agents or business partners in violation of applicable laws and regulations in the jurisdictions in which they conduct operations, including those applicable to businesses in the cannabis industry. Any improper acts or allegations could damage our reputation, the reputation of our portfolio companies and subject us and our portfolio companies to civil or criminal investigations and related shareholder lawsuits, could lead to substantial civil and criminal monetary and non-monetary penalties, and could cause us or our portfolio companies to incur significant legal and investigatory fees.

***Portfolio companies may be subject to regulatory, legal or reputational risk associated with potential misuse of their products by their customers.***

We cannot provide assurance that a portfolio company's customers will always use its products in the manner in which they intend. Any misuse of their products by their customers could lead to substantial civil and criminal monetary and non-monetary penalties, and could cause them to incur significant legal and investigatory fees.

***A portfolio company may not succeed in promoting and sustaining its brands, which could have an adverse effect on its future growth and business.***

A critical component of a portfolio company's future growth is its ability to promote and sustain its brands, often achieved by providing a high-quality user experience. An important element of a portfolio company's brand promotion strategy is establishing a relationship of trust with its consumers. In order to provide a high-quality user experience, a portfolio company may need to have invested and continue to invest substantial resources in the development of products, infrastructure, fulfillment and customer service operations. Campaigns designed to enhance a portfolio company's brand and attract consumers, subject to restrictions imposed by law, can be expensive and may not result in increased sales. If a portfolio company is unable to attract new customers or its consumers are dissatisfied with the quality of the products sold to them or the customer service they receive and their overall customer experience, it could see a decrease in sales, which could have a material adverse effect on the portfolio company's business, financial condition and results of operations, which in turn, could have an adverse effect on our business, financial condition and results of operations.

***Certain events or developments in the cannabis industry more generally may impact our reputation or the reputation of our portfolio companies.***

Damage to our reputation or the reputation of our portfolio companies can result from the actual or perceived occurrence of any number of events, including any negative publicity, whether true or not. If we invest in a portfolio company in the cannabis industry, because cannabis has been commonly associated with various other narcotics, violence and criminal activities, there is a risk that such business might attract negative publicity. There is also a risk that the actions of other companies, service providers and customers in the cannabis industry may negatively affect the reputation of the industry as a whole and thereby negatively impact our reputation or the reputation of our portfolio companies. The increased usage of social media and other web-based tools used to generate, publish and discuss user-generated content and to connect with other users has made it increasingly easier for individuals and groups to communicate and share negative opinions and views in regards to our and our portfolio companies' activities and the cannabis industry in general, whether true or not.

We do not ultimately have direct control over how we or the cannabis industry is perceived by others. Reputational issues may result in decreased investor confidence, increased challenges in developing and maintaining community relations and present an impediment to our overall ability to advance our business strategy and realize our investments.

***The cannabis industry is subject to the risks inherent in an agricultural business, including the risk of crop failure.***

The growing of cannabis is an agricultural process. As such, a portfolio company with operations in the cannabis industry is subject to the risks inherent in the agricultural business, including risks of crop failure presented by weather, insects, plant diseases and similar agricultural risks. Although some cannabis production is conducted indoors under climate controlled conditions, cannabis continues to be grown outdoors and there can be no assurance that artificial or natural elements, such as insects and plant diseases, will not entirely interrupt production activities or have an adverse effect on the production of cannabis and, accordingly, the operations of a portfolio company, which could have an adverse effect on our business, financial condition and results of operations.

***The cannabis industry is subject to transportation disruptions, including those related to an agricultural product.***

As a business revolving mainly around the growth of an agricultural product, the ability to obtain speedy, cost-effective and efficient transport services will be essential to the prolonged operations of a portfolio company's business. Should such transportation become unavailable for prolonged periods of time, it could have a material adverse effect on the portfolio company's business, financial condition and results of operations, which could also have an adverse effect on our business, financial condition and results of operations.

Due to the nature of a portfolio company's products, security of the product during transportation to and from its facilities may be important. A breach of security during transport or delivery could have a material adverse effect on a portfolio company's business, financial condition and results of operations, which could also have an adverse effect on our business, financial condition and results of operations. Any breach of the security measures during transport or delivery, including any failure to comply with recommendations or requirements of regulatory authorities, could also have an impact on the portfolio company's ability to continue operating under its license or the prospect of renewing its licenses.

***Many cannabis businesses are subject to significant environmental regulations and risks.***

Participants in the cannabis industry are subject to various environmental regulations in the jurisdictions in which they operate. These regulations may mandate, among other things, the maintenance of air and water quality standards and land reclamation. These regulations may also set forth limitations on the generation, transportation, storage and disposal of solid and hazardous waste. Environmental legislation is evolving in a manner which will require stricter standards and enforcement, increased fines and penalties for non-compliance, more stringent environmental assessments of proposed projects and a heightened degree of responsibility for companies and their officers, directors and employees. There is no assurance that future changes in environmental regulation, if any, will not adversely affect a portfolio company.

***Many cannabis businesses are dependent on key personnel with sufficient experience in the cannabis industry.***

The success of businesses in the cannabis industry is largely dependent on the performance of their respective management teams and key employees and their continuing ability to attract, develop, motivate and retain highly qualified and skilled employees. Qualified individuals are in high demand, and significant costs may be incurred to attract and retain them. The loss of the services of any key personnel, or an inability to attract other suitably qualified persons when needed, could prevent a business from executing on its business plan and strategy, and the business may be unable to find adequate replacements on a timely basis, or at all.

***There are a limited number of management teams in the cannabis industry that are familiar with U.S. securities laws.***

There are a limited number of management teams in the cannabis industry that have U.S. public company experience. As a result, management of a portfolio company, including any key personnel that it hires in the future, may not be familiar with U.S. securities laws. If such management team is unfamiliar with U.S. securities laws, they may have to expend time and resources becoming familiar with such laws. This could be expensive and time-consuming and could lead to various regulatory issues which may adversely affect our operations.

***It may be difficult to continuously maintain and retain a competitive talent pool with public company standards.***

As we grow, our Adviser may need to hire additional human resources to continue to develop our business. However, experienced talent, including senior management, with public company background in the areas of cannabis research and development, growing cannabis and extraction are difficult to source, and there can be no assurance that the appropriate individuals will be available or affordable.

Without adequate personnel and expertise, the growth of our business may suffer. There can be no assurance that our Adviser will be able to identify, attract, hire and retain qualified personnel and expertise in the future, and any failure to do so could have a material adverse effect on our business, financial condition or results of operations.

***A portfolio company may be dependent on skilled labor and suppliers.***

The ability of a portfolio company to compete and grow will be dependent on it having access, at a reasonable cost and in a timely manner, to skilled labor, equipment, parts and components. No assurances can be given that a portfolio company will be successful in maintaining its required supply of skilled labor, equipment, parts and components. Qualified individuals are in high demand, and the portfolio company may incur significant costs to attract and retain them. It is also possible that the final costs of the major equipment and materials, including packaging materials, contemplated by the portfolio company's capital expenditure program may be significantly greater than anticipated by the portfolio company's management, and may be greater than funds available to the portfolio company, in which circumstance the portfolio company may curtail, or extend the time frames for completing, its capital expenditure plans. This could have a material adverse effect on the portfolio company's business, financial condition and results of operations, which could also have an adverse effect on our business, financial condition and results of operations.

***Fraudulent or illegal activity by employees, contractors and consultants may adversely affect our portfolio companies' business, financial condition or results of operations.***

A portfolio company may be exposed to the risk that any of its employees, independent contractors or consultants may engage in fraudulent or other illegal activity. Misconduct by these parties could include intentional, reckless and/or negligent conduct or disclosure of unauthorized activities that violate (i) government regulations, (ii) manufacturing standards, (iii) federal, state and provincial healthcare fraud and abuse laws and regulations, or (iv) laws that require the true, complete and accurate reporting of financial information or data. It may not always be possible for the portfolio company to identify and deter misconduct by its employees and other third-parties, and the precautions taken by the portfolio company to detect and prevent this activity may not be effective in controlling unknown or unmanaged risks or losses or in protecting the portfolio company from governmental investigations or other actions or lawsuits stemming from a failure to be in compliance with such laws or regulations. If any such actions are instituted against the portfolio company, and it is not successful in defending itself or asserting its rights,



those actions could have a significant impact on the business of the portfolio company, including the imposition of civil, criminal and administrative penalties, damages, monetary fines, contractual damages, reputational harm, diminished profits and future earnings, and curtailment of the operations of the portfolio company, any of which could have a material adverse effect on the portfolio company's business, financial condition and results of operations, as well as our business, financial condition and results of operations.

***A portfolio company may be reliant on key inputs and may not be able to realize its cannabis production or capacity targets. The price of production of cannabis will also vary based on a number of factors outside of our portfolio companies' control.***

A portfolio company's ability to produce and process cannabis, and the price of production, may be affected by a number of factors, including available space, raw materials, plant design errors, non-performance by third-party contractors, increases in materials or labor costs, construction performance falling below expected levels of output or efficiency, environmental pollution, contractor or operator errors, breakdowns, processing bottlenecks, aging or failure of equipment or processes, labor disputes, as well as factors specifically related to indoor agricultural practices, such as reliance on provision of energy and utilities to the facility, and potential impacts of major incidents or catastrophic events on the facility, such as fires, explosions, earthquakes or storms. Any significant interruption or negative change in the availability or economics of the supply chain for key inputs could materially impact the business, financial condition and operating results of a portfolio company. Some of these inputs may only be available from a single supplier or a limited group of suppliers, including access to the electricity grid. If a sole source supplier was to go out of business, the portfolio company might be unable to find a replacement for such source in a timely manner or at all. If a sole source supplier were to be acquired by a competitor, that competitor may elect not to sell to the portfolio company in the future. Any inability to secure required supplies and services or to do so on appropriate terms could have a materially adverse impact on the business, financial condition, results of operations and prospects of such businesses, as well as an adverse impact on our business, financial condition and results of operations.

In addition, the price of production, sale and distribution of cannabis will fluctuate widely due to, among other factors, how young the cannabis industry is and the impact of numerous factors beyond the control of such businesses, including international, economic and political trends, expectations of inflation, currency exchange fluctuations, interest rates, global or regional consumptive patterns, speculative activities and increased production due to new production and distribution developments and improved production and distribution methods.

***A portfolio company may be vulnerable to rising energy costs.***

Cannabis growing operations consume considerable energy, which makes a portfolio company vulnerable to rising energy costs and/or the availability of stable energy sources. Accordingly, rising or volatile energy costs or the inability to access stable energy sources may have a material adverse effect on the portfolio company's business, financial condition and results of operations, which could also adversely affect our business, financial condition and results of operations.

***There may be a lack of access to U.S. bankruptcy protections for portfolio companies.***

Because cannabis is illegal under U.S. federal law, many courts have denied cannabis businesses bankruptcy protections, thus making it very difficult for lenders to recoup their investments in the cannabis industry in the event of a bankruptcy. If a portfolio company were to experience a bankruptcy, there is no guarantee that U.S. federal bankruptcy protections would be available, which could have a material adverse effect on the financial condition and prospects of such business and on our rights as lenders and security holders.

## **Risks Relating to Our Common Stock**

***Shares of closed-end investment companies, including BDCs, may trade at a discount to their NAV.***

Shares of closed-end investment companies, including BDCs, may trade at a discount to their NAV. This characteristic of closed-end investment companies and BDCs is separate and distinct from the risk that our NAV per share may decline. We cannot predict whether our common stock will trade at, above or below NAV.

***Investing in our common stock may involve an above-average degree of risk.***

The investments we intend to make in accordance with our investment objective may result in a higher amount of risk than alternative investment options and a higher risk of volatility or loss of principal. Our investments in portfolio companies involve higher levels of risk, and therefore, an investment in our shares may not be suitable for someone with lower risk tolerance.

***The market price of our common stock may fluctuate significantly.***

The market price and liquidity of the expected market for shares of our common stock may be significantly affected by numerous factors, some of which are beyond our control and may not be directly related to our operating performance. These factors include:

- significant volatility in the market price and trading volume of securities of BDCs or other companies in our sector, which are not necessarily related to the operating performance of these companies;
- inability to obtain any exemptive relief that may be required by us from the SEC, if any;
- changes in regulatory policies, accounting pronouncements or tax guidelines, particularly with respect to RICs and BDCs;
- loss of our BDC or RIC status;
- changes in earnings or variations in operating results or distributions that exceed our net investment income;
- increases in expenses associated with defense of litigation and responding to SEC inquiries;
- changes in accounting guidelines governing valuation of our investments;
- changes in the value of our portfolio of investments and any derivative instruments, including as a result of general economic conditions, interest rate shifts and changes in the performance of our portfolio companies;
- any shortfall in investment income or net investment income or any increase in losses from levels expected by investors or securities analysts;
- sales of our common stock by the Seed Investor (as defined below);
- departure of our Adviser's key personnel; and
- general economic trends and other external factors, including those related to the COVID-19 pandemic.

***Sales of substantial amounts of our common stock in the public market, including by the Seed Investor, may have an adverse effect on the market price of our common stock.***

The Adviser will be the seed investor of the Company (the "Seed Investor") and will provide initial funding to the Company by purchasing approximately \$50 million of our common stock in this offering. See "Control Persons and Principal Stockholders." The Seed Investor is providing this "seed capital" to the Company for the purpose of facilitating the launch and initial operation of the Company, as opposed to for long term investment purposes. Although the Seed Investor is subject to a 180-day lock-up agreement (see "Underwriting—Lock-Up Agreements"), the Seed Investor does not expect to hold our common stock indefinitely, and may sell our common stock at a future point in time. In order for the Seed Investor's sales of the shares of the Company not to be deemed to have been made "on the basis of" material nonpublic information, such sales may be made pursuant to a pre-approved trading plan that complies with Rule 10b5-1 under the Exchange Act and that may obligate the Seed Investor to make recurring sales of our common stock on a periodic basis. Sales of substantial amounts of our common stock, including by the Seed Investor or other large stockholders, or the availability of such common stock for sale, could adversely affect the prevailing market prices for our common stock. If this occurs and continues for a sustained period of time, it could impair our ability to raise additional capital through the sale of securities should we desire to do so.

***The Seed Investor will have significant influence over us after this offering, including having a 40% vote for matters that require the approval of stockholders, which could limit your ability to influence the outcome of matters submitted to stockholders for a vote.***

The Seed Investor will hold 40% of our voting stock (assuming no exercise of the over-allotment option) and have the ability to exercise substantial control over all corporate actions requiring stockholder approval, including the election and removal of directors, certain amendments of our charter, our ability to issue our common stock at a price below NAV per share, and the approval of any merger or other extraordinary corporate action.

***Certain provisions of our charter and bylaws and actions of our Board of Directors could deter takeover attempts and have an adverse impact on the value of shares of our common stock.***

Our charter, as well as certain statutory and regulatory requirements, contain certain provisions that may have the effect of discouraging a third-party from attempting to acquire us. Our Board of Directors is divided into three classes of directors serving staggered three-year terms. Our Board of Directors may, without stockholder action, authorize the issuance of shares in one or more classes or series, including shares of preferred stock; and our Board of Directors may, without stockholder action, amend our charter to increase the number of shares of our common stock, of any class or series, that we will have authority to issue. These anti-takeover provisions may inhibit a change of control in circumstances that could give the holders of shares of our common stock the opportunity to realize a premium over the value of shares of our common stock.

***Our common stockholders will bear the expenses associated with our borrowings, and the holders of our debt securities will have certain rights senior to our common stockholders.***

If in the future we issue debt securities, all of the costs of offering and servicing such debt, including interest thereon, will be borne by our common stockholders. The interests of the holders of any debt we may issue will not necessarily be aligned with the interests of our common stockholders. In particular, the rights of holders of our debt to receive interest or principal repayment will be senior to those of our common stockholders. In addition, we may grant a lender a security interest in a significant portion or all of our assets, even if the total amount we may borrow from such lender is less than the amount of such lender's security interest in our assets.

***Prior to our initial public offering, there will be no public market for our common stock, and we cannot assure you that the market price of shares of our common stock will not decline following our initial public offering.***

Before our initial public offering, there will be no public trading market for our common stock, and we cannot assure you that one will develop or be sustained after our initial public offering. We cannot predict the prices at which our common stock will trade. The initial public offering price for our common stock may not bear any relationship to the market price at which it may trade after our initial public offering. We cannot assure you that the market price of shares of our common stock will not decline following our initial public offering. In addition, if our common stock trades below its NAV, we will generally not be able to sell additional shares of our common stock to the public at its market price without first obtaining the approval of our stockholders (including our unaffiliated stockholders) and our independent directors for such issuance.

***Stockholders may incur dilution if we issue securities to subscribe to, convert to or purchase shares of our common stock.***

The 1940 Act prohibits us from selling shares of our common stock at a price below the current NAV per share of such stock with certain exceptions. One such exception is prior stockholder approval of issuances of securities to subscribe to, convert to or purchase shares of our common stock even if the subscription, conversion or purchase price per share of our common stock is below the NAV per share of our common stock at the time of any such subscription, conversion or purchase. Any decision to sell securities to subscribe to, convert to or purchase shares of our common stock will be subject to the determination by our Board of Directors that such issuance is in our and our stockholders' best interests. If we issue securities to subscribe to, convert to or purchase shares of common stock, the exercise or conversion of such securities would increase the number of outstanding shares of our common stock. Any such exercise or conversion would be dilutive on the voting power of existing stockholders, and could be dilutive with regard to distributions and our NAV, and other economic aspects of the common stock.

***Members of our management team and our board of directors and affiliated companies have been, and may from time to time be, involved in legal proceedings or governmental investigations unrelated to our business.***

Members of our management team and our board of directors have been involved in a wide variety of businesses. Such involvement has, and may lead to, media coverage and public awareness. As a result of such involvement, members of our management team and our board of directors and affiliated companies have been, and may from time to time be, involved in legal proceedings or governmental investigations unrelated to our business. Any such proceedings or investigations may be detrimental to our reputation and could negatively affect our ability to operate our business and may have an adverse effect on the price of our common stock.

## SPECIAL NOTE REGARDING FORWARD-LOOKING STATEMENTS

Some of the statements in this prospectus constitute forward-looking statements because they relate to future events or our future performance or financial condition. The forward-looking statements contained in this prospectus may include statements as to:

- our future operating results and distribution projections;
- our business prospects and the prospects of our portfolio companies;
- the impact of the investments that we expect to make;
- the ability of our portfolio companies to achieve their objectives;
- our expected financings and investments and the timing of our investments in our initial portfolio;
- changes in regulation impacting the cannabis industry;
- the adequacy of our cash resources and working capital; and
- the timing of cash flows, if any, from the operations of our portfolio companies.

In addition, words such as “anticipate,” “believe,” “expect,” “seek,” “plan,” “should,” “estimate” and “intend” indicate a forward-looking statement, although not all forward-looking statements include these words. The forward-looking statements contained in this prospectus involve risks and uncertainties. Our actual results could differ materially from those implied or expressed in the forward-looking statements for any reason, including the factors set forth in “Risk Factors” and elsewhere in this prospectus. Other factors that could cause actual results to differ materially include:

- changes in the economy;
- risks associated with possible disruption in our operations or the economy generally due to terrorism or natural disasters; and
- future changes in laws or regulations (including the interpretation of these laws and regulations by regulatory authorities) and conditions in our operating areas, particularly with respect to BDCs and RICs.

We have based the forward-looking statements included in this prospectus on information available to us on the date of this prospectus and we assume no obligation to update any such forward-looking statements, except as required by law. Although we undertake no obligation to revise or update any forward-looking statements, whether as a result of new information, future events or otherwise, you are advised to consult any additional disclosures that we may make directly to you or through reports that we in the future may file with the SEC, including annual reports on Form 10-K, quarterly reports on Form 10-Q and current reports on Form 8-K. The forward-looking statements contained in this prospectus are excluded from the safe harbor protection provided by Section 27A of the Securities Act, and the forward-looking statements that will be contained in our periodic reports are excluded from the safe-harbor protection provided by Section 21E of the Exchange Act.

## USE OF PROCEEDS

We estimate that the net proceeds we will receive from the sale of 8,928,572 shares of our common stock in this offering will be approximately \$117.6 million, or approximately \$135.2 million if the underwriters fully exercise their over-allotment option, in each case based on an initial public offering price of \$14.00 per share, after deducting the underwriting discounts and commissions paid by us and estimated organizational and offering expenses of approximately \$1.95 million payable by us. Such estimate is subject to change and no assurances can be given that actual expenses will not exceed such amount.

We plan to use the net proceeds of this offering primarily for loans and equity investments in accordance with our investment objective and strategies described in this prospectus and for general working capital purposes. We will also pay operating expenses, including management and administrative fees, and may pay other expenses such as due diligence expenses of potential new investments, from the net proceeds of this offering. We anticipate that substantially all of the net proceeds of this offering will be used for the above purposes within three to nine months, depending on the availability of appropriate investment opportunities consistent with our investment objective and market conditions. We cannot assure you we will achieve our targeted investment pace. Pending such use, we will invest the net proceeds from this offering primarily in high-quality, short-term debt securities, consistent with our BDC election and our election to be taxed as a RIC, at yields significantly below the returns which we expect to achieve when our portfolio is fully invested in securities meeting our investment objective. See “Regulation — Business Development Company Regulations — Temporary Investments.” Our ability to achieve our investment objective may be limited to the extent that the net proceeds from this offering, pending full investment, are held in interest-bearing deposits or other short-term instruments. See “Risk Factors — Risks Relating to Our Business and Structure — We may be unable to invest a significant portion of the net proceeds from this initial public offering, or any follow-on offering of shares of our common stock, on acceptable terms within an attractive time frame” for additional information regarding this matter.

## DISTRIBUTIONS

Subsequent to the completion of this offering, and to the extent that we have income available, we intend to make quarterly distributions to our stockholders beginning after our first full quarter of operations. The amount of our distributions, if any, will be determined by our Board of Directors.

We intend to elect to be treated, and intend to qualify annually to be treated, as a RIC under Subchapter M of the Code, for U.S. federal income tax purposes, commencing with our first taxable year ending after completion of this offering. As long as we qualify as a RIC, we will not be taxed on our investment company taxable income or realized net capital gains, to the extent that such taxable income or gains are distributed, or deemed to be distributed, to stockholders on a timely basis.

To obtain and maintain RIC tax treatment, we must distribute (or be deemed to distribute) at least 90% of the sum of our:

- investment company taxable income (which is generally our ordinary income plus the excess of realized short-term capital gains over realized net long-term capital losses), determined without regard to the deduction for dividends paid, for such taxable year; and
- net tax-exempt interest income (which is the excess of our gross tax-exempt interest income over certain disallowed deductions) for such taxable year.

As a RIC, we (but not our stockholders) generally will not be subject to U.S. federal tax on investment company taxable income and net capital gains that we distribute to our stockholders. The discussion below assumes that we will qualify to be treated as a RIC for U.S. federal tax purposes each year.

We intend to distribute annually all or substantially all of such income. To the extent that we retain our net capital gains or any investment company taxable income, we generally will be subject to corporate-level U.S. federal income tax. We can be expected to carry forward our net capital gains or any investment company taxable income in excess of current-year dividend distributions, and pay the U.S. federal excise tax as described below.

Depending on the level of taxable income earned in a tax year, we may choose to carry forward taxable income in excess of current-year distributions into the next tax year. We will be subject to a 4% excise tax on a certain portion of these undistributed amounts. Please refer to “Material U.S. Federal Income Tax Considerations” for further information regarding the consequences of our retention of net capital gains. We may, in the future, make actual distributions to our stockholders of our net capital gains. We can offer no assurance that we will achieve results that will permit the payment of any cash distributions and, if we issue senior securities, we may be prohibited from making distributions if doing so causes us to fail to maintain the asset coverage ratios stipulated by the 1940 Act or if distributions are limited by the terms of any of our borrowings. See “Regulation” and “Material U.S. Federal Income Tax Considerations.”

While we intend to distribute any income and capital gains in the manner necessary to minimize imposition of the 4% U.S. federal excise tax, sufficient amounts of our taxable income and capital gains may not be distributed and as a result, in such cases, the excise tax will be imposed. In such an event, we will be liable for this tax only on the amount by which we do not meet the foregoing distribution requirement.

We intend to pay quarterly distributions to our stockholders out of assets legally available for distribution. All distributions will be paid at the discretion of our Board of Directors and will depend on our earnings, financial condition, maintenance of our tax treatment as a RIC, compliance with applicable BDC regulations and such other factors as our Board of Directors may deem relevant from time to time.

To the extent our current taxable earnings for a year fall below the total amount of our distributions for that year, a portion of those distributions may be deemed a return of capital to our stockholders for U.S. federal income tax purposes. Thus, the source of a distribution to our stockholders may be the original capital invested by the stockholder rather than our income or gains. Stockholders should read written disclosure carefully and should not assume that the source of any distribution is our ordinary income or gains.

A return of capital is a return of a portion of your original investment in shares of our common stock. As a result, a return of capital will (i) lower your tax basis in your shares and thereby increase the amount of capital gain (or decrease the amount of capital loss) realized upon a subsequent sale or redemption of such shares and (ii) reduce the amount of funds we have for investment in portfolio companies. We have not established any limit on the extent to which we may use offering proceeds to fund distributions. However, our Board of Directors, including a majority of our independent directors, will be required to determine that making return of capital distributions from our offering proceeds is in the best interests of our stockholders based upon our then-current financial condition and our expected future growth prospects.

We have adopted an “opt out” dividend reinvestment plan for our common stockholders. As a result, if we make a cash distribution, then stockholders’ cash distributions will be automatically reinvested in additional shares of our common stock, unless they specifically “opt out” of the dividend reinvestment plan so as to receive cash distributions. Stockholders who receive distributions in the form of our shares of common stock will generally be subject to the same U.S. federal, state and local tax consequences as if they received cash distributions.

Shares of BDCs may trade at a market price that is less than the value of the net assets attributable to those shares. The possibilities that our shares of common stock will trade at a discount from NAV or at premiums that are unsustainable over the long term are separate and distinct from the risk that our NAV will decrease. It is not possible to predict whether the common stock offered hereby will trade at, above or below NAV.

## CAPITALIZATION

The following table sets forth:

- the actual capitalization of Silver Spike Investment Corp. at December 31, 2021; and
- the capitalization of Silver Spike Investment Corp. as adjusted to reflect the sale of 8,928,572 shares of our common stock in this offering at an expected initial public offering price of \$14.00 per share, after deducting the underwriting discounts and commissions paid by us and estimated organizational and offering expenses of approximately \$1.95 million payable by us.

You should read this table together with “Use of Proceeds” and the financial statements and the related notes thereto included elsewhere in this prospectus.

	As of December 31, 2021	
	Actual	As Adjusted(1)
<b>Assets:</b>		
Cash	\$ 5,400	\$ 117,555,400
Total assets	\$ 1,116,171	\$ 118,666,171
<b>Liabilities:</b>		
Total liabilities	\$ 1,520,653	\$ 1,520,653
<b>Stockholders' equity:</b>		
Common stock, par value \$0.01 per share; 100,000,000 shares authorized; 386 shares outstanding, actual; 8,928,958 shares outstanding, as adjusted	\$ 4	\$ 89,290
Additional paid-in capital	\$ 5,396	\$ 117,466,110
Accumulated losses	\$ (409,882)	\$ (409,882)
Total stockholders' equity	\$ (404,482)	\$ 117,145,518

(1) Does not include the underwriters' over-allotment option of 1,339,286 shares of our common stock.



## DISCUSSION OF MANAGEMENT'S OPERATING PLANS

*The following discussion and other parts of this prospectus contain forward-looking information that involves risks and uncertainties. Our actual results could differ materially from those anticipated by such forward-looking information due to factors discussed under "Risk Factors" appearing elsewhere in the prospectus.*

### Overview

We are a newly organized specialty finance company formed to invest across the cannabis ecosystem through investments in the form of direct loans to, and equity ownership of, privately held cannabis companies. All of our investments are designed to be compliant with all applicable laws and regulations within the jurisdictions in which they are made or to which we are otherwise subject, including U.S. federal laws. We will make equity investments only in companies that are compliant with all applicable laws and regulations within the jurisdictions in which they are located or operate, including U.S. federal laws. We may make loans to companies that we determine based on our due diligence are licensed in, and complying with, state-regulated cannabis programs, regardless of their status under U.S. federal law, so long as the investment itself is designed to be compliant with all applicable laws and regulations in the jurisdiction in which the investment is made or to which we are otherwise subject, including U.S. federal law. We are externally managed by SSC and seek to expand the compliant cannabis investment activities of SSC's leading investment platform in the cannabis industry. We primarily seek to partner with private equity firms, entrepreneurs, business owners and management teams to provide credit and equity financing alternatives to support buyouts, recapitalizations, growth initiatives, refinancings and acquisitions across cannabis companies, including cannabis-enabling technology companies, cannabis-related health and wellness companies, and hemp and CBD distribution companies. Under normal circumstances, each such cannabis company derives at least 50% of its revenues or profits from, or commits at least 50% of its assets to, activities related to cannabis at the time of our investment in the cannabis company. We are not required to invest a specific percentage of our assets in such cannabis companies, and we may make debt and equity investments in other companies in the health and wellness sector.

Our investment objective is to maximize risk-adjusted returns on equity for our shareholders. We will seek to capitalize on what we believe to be nascent cannabis industry growth and drive return on equity by generating current income from our debt investments and capital appreciation from our equity and equity-related investments. We intend to achieve our investment objective by investing primarily in secured debt, unsecured debt, equity warrants and direct equity investments in privately held businesses. We intend that our debt investments will often be secured by either a first or second priority lien on the assets of the portfolio company, can include either fixed or floating rate terms and will generally have a term of between three and six years from the original investment date. We expect our secured loans to be secured by various types of assets of our borrowers. While the types of collateral securing any given secured loan will depend on the nature of the borrower's business, common types of collateral we expect to secure our loans include real property and certain personal property, including equipment, inventory, receivables, cash, intellectual property rights and other assets to the extent permitted by applicable laws and the regulations governing our borrowers. Certain attractive assets of our borrowers, such as cannabis licenses and cannabis inventory, may not be able to be used as collateral or transferred to us. See "Risk Factors—Risks Relating to Our Investments—Certain assets of our borrowers may not be used as collateral or transferred to us due to applicable state laws and regulations governing the cannabis industry, and such restrictions could negatively impact our profitability." In some of our portfolio investments, we expect to receive nominally priced equity warrants and/or make direct equity investments in connection with a debt investment. In addition, a portion of our portfolio may be comprised of derivatives, including total return swaps.

Generally, the loans in which we expect to invest will have a complete set of financial maintenance covenants, which are used to proactively address materially adverse changes in a portfolio company's financial performance. However, to a lesser extent, we may invest in "covenant-lite" loans. We use the term "covenant-lite" to refer generally to loans that do not have a complete set of financial maintenance covenants. Generally, "covenant-lite" loans provide borrower companies more freedom to negatively impact lenders because their covenants are incurrence-based, which means they are only tested and can only be breached following an affirmative action of the borrower, rather than by a deterioration in the borrower's financial condition. Accordingly, to the extent we invest in "covenant-lite" loans, we may have fewer rights against a borrower and may have a greater risk of loss on such investments as compared to investments in or exposure to loans with a complete set of financial maintenance covenants.

The loans in which we tend to invest typically pay interest at rates which are determined periodically on the basis of the London-Interbank Offered Rate, or "LIBOR," plus a premium. The loans in which we expect to invest are typically made to U.S. and, to a limited extent, non-U.S. (including emerging market) corporations, partnerships and other business entities which operate in various industries and geographical regions. These loans typically are rated below investment grade. Securities rated below investment grade are often referred to as "high-yield" or "junk" securities, and may be considered a higher risk than debt instruments that are rated above investment grade.

We expect to invest in loans made primarily to private leveraged middle-market companies with approximately \$5 million to \$50 million of earnings before interest, taxes, depreciation and amortization, or “EBITDA.” Our business model is focused primarily on the direct origination of investments through portfolio companies or their financial sponsors. We expect that our investments will generally range between \$5 million and \$40 million each, although we expect that this investment size will vary proportionately with the size of our capital base. We have an active pipeline of investments and are currently reviewing over \$1.1 billion of potential investments in varying stages of underwriting.

We will be externally managed by Silver Spike Capital, LLC. SSC will also provide the administrative services necessary for us to operate. We believe that our ability to leverage the existing investment management platform of SSC will enable us to operate more efficiently and with lower overhead costs than other newly formed funds of comparable size.

We were formed in January 2021 as a Maryland corporation and structured as an externally managed, closed-end, non-diversified management investment company. We have elected to be treated as a business development company, or BDC, under the 1940 Act. In addition, for U.S. federal income tax purposes we intend to elect to be treated, and intend to qualify annually to be treated, as a regulated investment company, or RIC, under Subchapter M of the Code, commencing with our first taxable year ending after completion of this offering.

### **Revenues**

We intend to generate revenues primarily in the form of interest income from the investments we hold. In addition, we may generate income from dividends on either direct equity investments or equity interests obtained in connection with originating loans, such as options, warrants or conversion rights. Our debt investments typically have a term of three to six years. We expect that the majority of our loan portfolio will bear interest at a floating rate, subject to interest rate floors in certain cases. Interest on our debt investments will generally be payable either monthly or quarterly.

Our investment portfolio will consist primarily of floating rate loans, and our credit facilities will bear interest at floating rates. Macro trends in base interest rates like LIBOR may affect our net investment income over the long term. However, because we generally originate loans to a small number of portfolio companies each quarter, and those investments vary in size, our results in any given period, including the interest rate on investments that were sold or repaid in a period compared to the interest rate of new investments made during that period, often are idiosyncratic, and reflect the characteristics of the particular portfolio companies that we invested in or exited during the period and not necessarily any trends in our business or macro trends.

Loan origination fees, OID and market discount or premium are capitalized, and we accrete or amortize such amounts under accounting principles generally accepted in the United States of America (“U.S. GAAP”) as interest income using the effective yield method for term instruments and the straight-line method for revolving or delayed draw instruments. Repayments of our debt investments can reduce interest income from period to period. The frequency or volume of these repayments may fluctuate significantly. We record prepayment premiums on loans as interest income. We may also generate revenue in the form of commitment, loan origination, structuring, or due diligence fees, fees for providing managerial assistance to our portfolio companies and possibly consulting fees.

Dividend income on equity investments is recorded on the record date for private portfolio companies or on the ex-dividend date for publicly traded companies.

Our portfolio activity will also reflect the proceeds from sales of investments. We recognize realized gains or losses on investments based on the difference between the net proceeds from the disposition and the amortized cost

basis of the investment without regard to unrealized gains or losses previously recognized. We record current-period changes in fair value of investments that are measured at fair value as a component of the net change in unrealized gains (losses) on investments in the consolidated statement of operations.

### ***Expenses***

Our primary operating expenses are the payment of a base management fee and any incentive fees under the Investment Advisory Agreement and the allocable portion of overhead and other expenses incurred by SSC in performing its obligations under the Administration Agreement. Our investment management fee compensates our Adviser for its work in identifying, evaluating, negotiating, executing, monitoring, servicing and realizing our investments. See “Investment Advisory Agreement.”

Except as specifically provided below, all investment professionals and staff of the Adviser, when and to the extent engaged in providing investment advisory and management services to us, the base compensation, bonus and benefits, and the routine overhead expenses of such personnel allocable to such services, are provided and paid for by the Adviser. We bear our allocable portion of the compensation paid by the Adviser (or its affiliates) to our CFO and CCO and their respective staffs (based on a percentage of time such individuals devote, on an estimated basis, to our business affairs). We bear all other expenses of our operations and transactions, including (without limitation) fees and expenses relating to:

- the cost of our organization and offerings;
- the cost of calculating our NAV, including the cost of any third-party valuation services;
- the cost of effecting sales and repurchases of shares of our common stock and other securities;
- fees and expenses payable under any underwriting agreements, if any;
- debt service and other costs of borrowings or other financing arrangements;
- costs of hedging;
- expenses, including travel expenses, incurred by the Adviser, or members of the investment team, or payable to third-parties, performing due diligence on prospective portfolio companies and, if necessary, enforcing our rights;
- management and incentive fees payable pursuant to the Investment Advisory Agreement;
- fees payable to third-parties relating to, or associated with, making investments and valuing investments (including third-party valuation firms);
- costs, including legal fees, associated with compliance under cannabis laws;
- transfer agent and custodial fees;
- fees and expenses associated with marketing efforts (including attendance at industry and investor conferences and similar events);
- federal and state registration fees;
- any exchange listing fees and fees payable to rating agencies;
- federal, state and local taxes;
- independent directors’ fees and expenses, including travel expenses;

- cost of preparing financial statements and maintaining books and records and filing reports or other documents with the SEC (or other regulatory bodies) and other reporting and compliance costs, and the compensation of professionals responsible for the preparation of the foregoing;
- the cost of any reports, proxy statements or other notices to our stockholders (including printing and mailing costs), the costs of any stockholder or director meetings and the compensation of investor relations personnel responsible for the preparation of the foregoing and related matters;
- brokerage commissions and other compensation payable to brokers or dealers;
- research and market data;
- fidelity bond, directors' and officers' errors and omissions liability insurance and other insurance premiums;
- direct costs and expenses of administration, including printing, mailing and staff;
- fees and expenses associated with independent audits, and outside legal and consulting costs;
- costs of winding up;
- costs incurred in connection with the formation or maintenance of entities or vehicles to hold our assets for tax or other purposes;
- extraordinary expenses (such as litigation or indemnification); and
- costs associated with reporting and compliance obligations under the 1940 Act and applicable federal and state securities laws.

We expect, but cannot assure, that our general and administrative expenses will increase in dollar terms during periods of asset growth, but will decline as a percentage of total assets during such periods.

### ***Hedging***

To the extent that any of our loans and other investments are denominated in a currency other than U.S. dollars, we may enter into currency hedging contracts to reduce our exposure to fluctuations in currency exchange rates. We may also enter into interest rate hedging agreements. Such hedging activities, which will be subject to compliance with applicable legal requirements, may include the use of futures, options, swaps and forward contracts. Costs incurred in entering into such contracts or in connection with settling them will be borne by us.

### ***Financial Condition, Liquidity and Capital Resources***

We will generate cash primarily from the net proceeds of this offering and any future offerings of securities and cash flows from operations, including interest earned from the temporary investment of cash in U.S. government securities and other high-quality debt investments that mature in one year or less.

In addition, we expect to enter into a credit facility in the near future. The amount of leverage that we employ will depend on our assessment of market conditions and other factors at the time of any proposed borrowing, such as the maturity, covenant package and rate structure of the proposed borrowings, our ability to raise funds through the issuance of shares of our common stock and the risks of such borrowings within the context of our investment outlook. Ultimately, we only intend to use leverage if the expected returns from borrowing to make investments will exceed the cost of such borrowing. We are currently targeting a debt-to-equity ratio of 0.50x (i.e., we aim to have one dollar of equity for each \$0.50 of debt outstanding).

Our primary use of funds will be investments in portfolio companies, cash distributions to holders of our common stock, and the payment of operating expenses. Immediately after this offering, assuming an initial offering of 8,928,572 shares of our common stock at a price of \$14.00 per share, we expect to have cash resources of approximately \$117.6 million and no indebtedness. This amount does not take into account the exercise of the underwriters' over-allotment option. See "Use of Proceeds."

## Critical Accounting Policies

### *Basis of Presentation*

The preparation of financial statements in accordance with U.S. GAAP requires management to make certain estimates and assumptions affecting amounts reported in our financial statements. We identify investment valuation and revenue recognition as our most critical accounting estimates. We will continuously evaluate our estimates, including those related to the matters described below. These estimates will be based on the information that is currently available to us and on various other assumptions that we believe to be reasonable under the circumstances. Actual results could differ materially from those estimates under different assumptions or conditions. A discussion of our critical accounting policies follows.

### *Investment Valuation*

Investment transactions are recorded on the trade date at fair value. Realized gains or losses are measured by the difference between the net proceeds received (excluding prepayment fees, if any) and the amortized cost basis of the investment using the specific identification method without regard to unrealized gains or losses previously recognized, and include investments charged off during the period, net of recoveries. The net change in unrealized gains or losses primarily reflects the change in investment values, including the reversal of previously recorded unrealized gains or losses with respect to investments realized during the period. We record current-period changes in fair value of investments that are measured at fair value as a component of the net change in unrealized gains (losses) on investments in the consolidated statement of operations.

Investments for which market quotations are readily available are typically valued at the bid price of those market quotations. To validate market quotations, we utilize a number of factors to determine if the quotations are representative of fair value, including the source and number of the quotations. Debt and equity securities that are not publicly traded or whose market prices are not readily available, as is the case for substantially all of our investments, are valued at fair value as determined in good faith by our Board of Directors, based on, among other things, the input of the Adviser, our Audit Committee and independent third-party valuation firm(s) engaged at the direction of the Board of Directors.

As part of the valuation process, the Board of Directors takes into account relevant factors in determining the fair value of our investments, including: the estimated enterprise value of a portfolio company (i.e., the total fair value of the portfolio company's debt and equity), the nature and realizable value of any collateral, the portfolio company's ability to make payments based on its earnings and cash flow, the markets in which the portfolio company does business, a comparison of the portfolio company's securities to any similar publicly traded securities, and overall changes in the interest rate environment and the credit markets that may affect the price at which similar investments may be made in the future. When an external event such as a purchase transaction, public offering or subsequent equity sale occurs, the Board of Directors considers whether the pricing indicated by the external event corroborates its valuation.

The Board of Directors undertakes a multi-step valuation process, which includes, among other procedures, the following:

- With respect to investments for which market quotations are readily available, those investments will typically be valued at the bid price of those market quotations;
- With respect to investments for which market quotations are not readily available, the valuation process begins with the independent valuation firm(s) providing a preliminary valuation of each investment to the Adviser's valuation committee;
- Preliminary valuation conclusions are documented and discussed with the Adviser's valuation committee. Agreed-upon valuation recommendations are presented to the Audit Committee;
- The Audit Committee reviews the valuation recommendations and recommends values for each investment to the Board of Directors; and

- The Board of Directors reviews the recommended valuations and determines the fair value of each investment.

We conduct this valuation process on a quarterly basis.

We apply Financial Accounting Standards Board Accounting Standards Codification 820, Fair Value Measurements (“ASC 820”), as amended, which establishes a framework for measuring fair value in accordance with U.S. GAAP and required disclosures of fair value measurements. ASC 820 determines fair value to be the price that would be received for an investment in a current sale, which assumes an orderly transaction between market participants on the measurement date. Market participants are defined as buyers and sellers in the principal or most advantageous market (which may be a hypothetical market) that are independent, knowledgeable, and willing and able to transact. In accordance with ASC 820, we consider the principal market to be the market that has the greatest volume and level of activity. ASC 820 specifies a fair value hierarchy that prioritizes and ranks the level of observability of inputs used in determination of fair value. In accordance with ASC 820, these levels are summarized below:

- Level 1 – Valuations based on quoted prices in active markets for identical assets or liabilities that we have the ability to access;
- Level 2 – Valuations based on quoted prices in markets that are not active or for which all significant inputs are observable, either directly or indirectly; and
- Level 3 – Valuations based on inputs that are unobservable and significant to the overall fair value measurement.

Transfers between levels, if any, are recognized at the beginning of the quarter in which the transfer occurred. In addition to using the above inputs in investment valuations, we apply the valuation policy approved by our Board of Directors that is consistent with ASC 820. Consistent with the valuation policy, we evaluate the source of the inputs, including any markets in which our investments are trading (or any markets in which securities with similar attributes are trading), in determining fair value. When an investment is valued based on prices provided by reputable dealers or pricing services (that is, broker quotes), we subject those prices to various criteria in making the determination as to whether a particular investment would qualify for treatment as a Level 2 or Level 3 investment. For example, we, or the independent valuation firm(s), review pricing support provided by dealers or pricing services in order to determine if observable market information is being used, versus unobservable inputs.

Due to the inherent uncertainty of determining the fair value of investments that do not have a readily available market value, the fair value of our investments may fluctuate from period to period. Additionally, the fair value of such investments may differ significantly from the values that would have been used had a ready market existed for such investments and may differ materially from the values that may ultimately be realized. Further, such investments are generally less liquid than publicly traded securities and may be subject to contractual and other restrictions on resale. If we were required to liquidate a portfolio investment in a forced or liquidation sale, it could realize amounts that are different from the amounts presented and such differences could be material.

In addition, changes in the market environment and other events that may occur over the life of the investments may cause the gains or losses ultimately realized on these investments to be different than the unrealized gains or losses reflected previously.

In December 2020, the SEC adopted Rule 2a-5 under the 1940 Act, which is intended to address valuation practices and the role of the board of directors with respect to the fair value of the investments of a registered investment company or business development company. Among other things, Rule 2a-5 will permit a fund’s board to designate the fund’s primary investment adviser to perform the fund’s fair value determinations, which will be subject to board oversight and certain reporting and other requirements intended to ensure that the board receives the information it needs to oversee the investment adviser’s fair value determinations. Compliance with Rule 2a-5 will not be required until September 2022. We continue to review Rule 2a-5 and its impact on our valuation policies and related practices.

The NAV per share of our outstanding shares of common stock is determined quarterly by dividing the value of total assets minus liabilities by the total number of shares outstanding.

## **Revenue Recognition**

### *Interest and Dividend Income*

Interest income is recorded on the accrual basis and includes amortization of discounts or premiums. Certain investments may have contractual PIK interest or dividends. PIK interest represents accrued interest that is added to the principal amount of the investment on the respective interest payment dates rather than being paid in cash and generally becomes due at maturity. Discounts and premiums to par value on securities purchased are amortized into interest income over the contractual life of the respective security using the effective yield method. The amortized cost of investments represents the original cost adjusted for the amortization of discounts or premiums, if any. Upon prepayment of a loan or debt security, any prepayment premiums, unamortized upfront loan origination fees and unamortized discounts are recorded as interest income in the current period.

Loans are generally placed on non-accrual status when there is reasonable doubt that principal or interest will be collected in full. Accrued interest is generally reversed when a loan is placed on non-accrual status. Interest payments received on non-accrual loans may be recognized as income or applied to principal depending upon management's judgment regarding collectability. If at any point we believe PIK interest is not expected to be realized, the investment generating PIK interest will be placed on non-accrual status. When a PIK investment is placed on non-accrual status, the accrued, uncapitalized interest or dividends are generally reversed through interest income. Non-accrual loans are restored to accrual status when past-due principal and interest are paid current and, in management's judgment, are likely to remain current. Management may make exceptions to this treatment and determine to not place a loan on non-accrual status if the loan has sufficient collateral value and is in the process of collection.

We intend to structure loans with PIK interest when, after considering the applicable interest rate and other fees that we may recognize, we expect that such loans will provide an attractive risk-adjusted return. For a discussion of risks we are subject to as a result of our use of PIK interest in connection with our investments, see "Risk Factors — Risks Relating Distributions — We may have difficulty paying our required distributions if we are required to recognize income for U.S. federal income tax purposes before or without receiving cash representing such income," "— We may in the future choose to pay distributions partly in our own stock, in which case you may be required to pay tax in excess of the cash you receive" and "Risk factors — Risks Relating to Conflicts of Interest — Our incentive fee may induce our Adviser to make speculative investments." The accrual of PIK interest on our debt investments will increase the recorded cost basis of these investments in our financial statements and, as a result, will increase the cost basis of these investments for purposes of computing the Incentive Fee on Capital Gains payable by us to our Adviser. To maintain our status as a RIC, PIK income must be paid out to our stockholders in the form of dividends even though we have not yet collected the cash and may never collect the cash relating to the PIK interest.

Dividend income on preferred equity securities is recorded on the accrual basis to the extent that such amounts are payable by the portfolio company and are expected to be collected. Dividend income on common equity securities is recorded on the record date for private portfolio companies or on the ex-dividend date for publicly traded portfolio companies.

### *Fee Income*

From time to time, we may receive fees for services provided to portfolio companies. These fees are generally only available to us as a result of closing investments, are normally paid at the closing of the investments, are generally non-recurring, and are recognized as revenue when earned upon closing of the investment. The services that the Adviser provides vary by investment, but can include closing, work, diligence, or other similar fees and fees for providing managerial assistance to the our portfolio companies.

## *Organization and Offering Expenses*

Costs associated with our organization will be expensed as incurred. We will record expenses related to public equity offerings as a reduction of capital upon completion of an offering of registered securities.

## *Federal Income Taxes*

We intend to elect to be treated for federal income tax purposes, and intend to qualify annually thereafter to be treated, as a RIC under Subchapter M of the Code. As a RIC, we generally will not have to pay corporate-level federal income taxes on any ordinary income or capital gains that we distribute to our stockholders from our tax earnings and profits. To obtain and maintain our RIC tax treatment, we must, among other things, meet specified source-of-income and asset diversification requirements and distribute annually at least 90% of our ordinary income and realized net short-term capital gains in excess of realized net long-term capital losses, if any. See “Material U.S. Federal Income Tax Considerations.”

## **Distribution Policy**

Subsequent to the completion of this offering, and to the extent that we have income available, we intend to make quarterly distributions to our stockholders beginning after our first full quarter of operations. The amount of our distributions, if any, will be determined by our Board of Directors.

We intend to elect to be treated, and intend to qualify annually to be treated, as a RIC under Subchapter M of the Code, for U.S. federal income tax purposes, commencing with our first taxable year ending after completion of this offering. As long as we qualify as a RIC, we will not be taxed on our investment company taxable income or realized net capital gains, to the extent that such taxable income or gains are distributed, or deemed to be distributed, to stockholders on a timely basis.

To obtain and maintain RIC tax treatment, we must distribute (or be deemed to distribute) at least 90% of the sum of our:

- investment company taxable income (which is generally our ordinary income plus the excess of realized short-term capital gains over realized net long-term capital losses), determined without regard to the deduction for dividends paid, for such taxable year; and
- net tax-exempt interest income (which is the excess of our gross tax-exempt interest income over certain disallowed deductions) for such taxable year.

As a RIC, we (but not our stockholders) generally will not be subject to U.S. federal tax on investment company taxable income and net capital gains that we distribute to our stockholders. The discussion below assumes that we will qualify to be treated as a RIC for U.S. federal tax purposes each year.

We intend to distribute annually all or substantially all of such income. To the extent that we retain our net capital gains or any investment company taxable income, we generally will be subject to corporate-level U.S. federal income tax. We can be expected to carry forward our net capital gains or any investment company taxable income in excess of current-year dividend distributions, and pay the U.S. federal excise tax as described below.

Depending on the level of taxable income earned in a tax year, we may choose to carry forward taxable income in excess of current-year distributions into the next tax year. We will be subject to a 4% excise tax on a certain portion of these undistributed amounts. Please refer to “Material U.S. Federal Income Tax Considerations” for further information regarding the consequences of our retention of net capital gains. We may, in the future, make actual distributions to our stockholders of our net capital gains. We can offer no assurance that we will achieve results that will permit the payment of any cash distributions and, if we issue senior securities, we may be prohibited from making distributions if doing so causes us to fail to maintain the asset coverage ratios stipulated by the 1940 Act or if distributions are limited by the terms of any of our borrowings. See “Regulation” and “Material U.S. Federal Income Tax Considerations.”



While we intend to distribute any income and capital gains in the manner necessary to minimize imposition of the 4% U.S. federal excise tax, sufficient amounts of our taxable income and capital gains may not be distributed and as a result, in such cases, the excise tax will be imposed. In such an event, we will be liable for this tax only on the amount by which we do not meet the foregoing distribution requirement.

We intend to pay quarterly distributions to our stockholders out of assets legally available for distribution. All distributions will be paid at the discretion of our Board of Directors and will depend on our earnings, financial condition, maintenance of our tax treatment as a RIC, compliance with applicable BDC regulations and such other factors as our Board of Directors may deem relevant from time to time.

To the extent our current taxable earnings for a year fall below the total amount of our distributions for that year, a portion of those distributions may be deemed a return of capital to our stockholders for U.S. federal income tax purposes. Thus, the source of a distribution to our stockholders may be the original capital invested by the stockholder rather than our income or gains. Stockholders should read written disclosure carefully and should not assume that the source of any distribution is our ordinary income or gains.

A return of capital is a return of a portion of your original investment in shares of our common stock. As a result, a return of capital will (i) lower your tax basis in your shares and thereby increase the amount of capital gain (or decrease the amount of capital loss) realized upon a subsequent sale or redemption of such shares and (ii) reduce the amount of funds we have for investment in portfolio companies. We have not established any limit on the extent to which we may use offering proceeds to fund distributions. However, our Board of Directors, including a majority of our independent directors, will be required to determine that making return of capital distributions from our offering proceeds is in the best interests of our stockholders based upon our then-current financial condition and our expected future growth prospects.

We have adopted an “opt out” dividend reinvestment plan for our common stockholders. As a result, if we make a cash distribution, then stockholders’ cash distributions will be automatically reinvested in additional shares of our common stock, unless they specifically “opt out” of the dividend reinvestment plan so as to receive cash distributions.

### **Other Contractual Obligations**

We will have certain commitments pursuant to our Investment Advisory Agreement that we have entered into with SSC. We have agreed to pay a fee for investment advisory services consisting of two components: a base management fee and an incentive fee. Payments under the Investment Advisory Agreement will be equal to (1) a percentage of the value of our average gross assets and (2) a two-part incentive fee, as described in more detail below. See “Investment Advisory Agreement.” We have also entered into a contract with SSC to serve as our administrator. Payments under the Administration Agreement will equal an amount based upon our allocable portion of our administrator’s overhead in performing its obligation under the agreement, including rent, fees and other expenses inclusive of our allocable portion of the compensation of our CFO and CCO and their respective staffs (based on a percentage of time such individuals devote, on an estimated basis, to our business affairs). See “Administration Agreement.”

**General**

We are a newly organized specialty finance company formed to invest across the cannabis ecosystem through investments in the form of direct loans to, and equity ownership of, privately held cannabis companies. All of our investments are designed to be compliant with all applicable laws and regulations within the jurisdictions in which they are made or to which we are otherwise subject, including U.S. federal laws. We will make equity investments only in companies that are compliant with all applicable laws and regulations within the jurisdictions in which they are located or operate, including U.S. federal laws. We may make loans to companies that we determine based on our due diligence are licensed in, and complying with, state-regulated cannabis programs, regardless of their status under U.S. federal law, so long as the investment itself is designed to be compliant with all applicable laws and regulations in the jurisdiction in which the investment is made or to which we are otherwise subject, including U.S. federal law. We are externally managed by SSC and seek to expand the compliant cannabis investment activities of SSC's leading investment platform in the cannabis industry. We primarily seek to partner with private equity firms, entrepreneurs, business owners and management teams to provide credit and equity financing alternatives to support buyouts, recapitalizations, growth initiatives, refinancings and acquisitions across cannabis companies, including cannabis-enabling technology companies, cannabis-related health and wellness companies, and hemp and CBD distribution companies. Under normal circumstances, each such cannabis company derives at least 50% of its revenues or profits from, or commits at least 50% of its assets to, activities related to cannabis at the time of our investment in the cannabis company. We are not required to invest a specific percentage of our assets in such cannabis companies, and we may make debt and equity investments in other companies in the health and wellness sector.

Our investment objective is to maximize risk-adjusted returns on equity for our shareholders. We will seek to capitalize on what we believe to be nascent cannabis industry growth and drive return on equity by generating current income from our debt investments and capital appreciation from our equity and equity-related investments. We intend to achieve our investment objective by investing primarily in secured debt, unsecured debt, equity warrants and direct equity investments in privately held businesses. We intend that our debt investments will often be secured by either a first or second priority lien on the assets of the portfolio company, can include either fixed or floating rate terms and will generally have a term of between three and six years from the original investment date. We expect our secured loans to be secured by various types of assets of our borrowers. While the types of collateral securing any given secured loan will depend on the nature of the borrower's business, common types of collateral we expect to secure our loans include real property and certain personal property, including equipment, inventory, receivables, cash, intellectual property rights and other assets to the extent permitted by applicable laws and the regulations governing our borrowers. Certain attractive assets of our borrowers, such as cannabis licenses and cannabis inventory, may not be able to be used as collateral or transferred to us. See "Risk Factors—Risks Relating to Our Investments—Certain assets of our borrowers may not be used as collateral or transferred to us due to applicable state laws and regulations governing the cannabis industry, and such restrictions could negatively impact our profitability." In some of our portfolio investments, we expect to receive nominally priced equity warrants and/or make direct equity investments in connection with a debt investment. In addition, a portion of our portfolio may be comprised of derivatives, including total return swaps.

Generally, the loans in which we expect to invest will have a complete set of financial maintenance covenants, which are used to proactively address materially adverse changes in a portfolio company's financial performance. However, to a lesser extent, we may invest in "covenant-lite" loans. We use the term "covenant-lite" to refer generally to loans that do not have a complete set of financial maintenance covenants. Generally, "covenant-lite" loans provide borrower companies more freedom to negatively impact lenders because their covenants are incurrence-based, which means they are only tested and can only be breached following an affirmative action of the borrower, rather than by a deterioration in the borrower's financial condition. Accordingly, to the extent we invest in "covenant-lite" loans, we may have fewer rights against a borrower and may have a greater risk of loss on such investments as compared to investments in or exposure to loans with a complete set of financial maintenance covenants.

The loans in which we tend to invest typically pay interest at rates which are determined periodically on the basis of LIBOR plus a premium. The loans in which we expect to invest are typically made to U.S. and, to a limited extent, non-U.S. (including emerging market) corporations, partnerships and other business entities which operate in various industries and geographical regions. These loans typically are rated below investment grade. Securities rated below investment grade are often referred to as "high-yield" or "junk" securities, and may be considered a higher risk than debt instruments that are rated above investment grade.

We expect to invest in loans made primarily to private leveraged middle-market companies with approximately \$5 million to \$50 million of earnings before interest, taxes, depreciation and amortization, or “EBITDA.” Our business model is focused primarily on the direct origination of investments through portfolio companies or their financial sponsors. We expect that our investments will generally range between \$5 million and \$40 million each, although we expect that this investment size will vary proportionately with the size of our capital base. We have an active pipeline of investments and are currently reviewing over \$1.1 billion of potential investments in varying stages of underwriting.

We will be externally managed by Silver Spike Capital, LLC. SSC will also provide the administrative services necessary for us to operate. We believe that our ability to leverage the existing investment management platform of SSC will enable us to operate more efficiently and with lower overhead costs than other newly formed funds of comparable size.

We were formed in January 2021 as a Maryland corporation and structured as an externally managed, closed-end, non-diversified management investment company. We have elected to be treated as a BDC under the 1940 Act. In addition, for U.S. federal income tax purposes we intend to elect to be treated, and intend to qualify annually to be treated, as a RIC under Subchapter M of the Code, commencing with our first taxable year ending after completion of this offering. Also, we are an “emerging growth company,” as defined in the JOBS Act, and intend to take advantage of the exemption for emerging growth companies allowing us to temporarily forego the auditor attestation requirements of Section 404(b) of the Sarbanes-Oxley Act of 2002.

As a BDC, we will be required to comply with regulatory requirements, including limitations on our use of debt. We will be permitted to, and expect to, finance our investments through borrowings. However, as a BDC, we will only generally be allowed to borrow amounts such that our asset coverage, as defined in the 1940 Act, equals at least 150% after such borrowing. Under a 150% asset coverage ratio a BDC may borrow \$2 for investment purposes of every \$1 of investor equity. The amount of leverage that we employ will depend on our assessment of market conditions and other factors at the time of any proposed borrowing, such as the maturity, covenant package and rate structure of the proposed borrowings, our ability to raise funds through the issuance of shares of our common stock and the risks of such borrowings within the context of our investment outlook. Ultimately, we only intend to use leverage if the expected returns from borrowing to make investments will exceed the cost of such borrowing. We are currently targeting a debt-to-equity ratio of 0.50x (i.e., we aim to have one dollar of equity for each \$0.50 of debt outstanding).

As a RIC, we generally will not have to pay corporate-level federal income taxes on any net ordinary income or realized net capital gains that we distribute to our stockholders if we meet certain source-of-income, income distribution and asset diversification requirements.

### **The Investment Adviser**

Silver Spike Capital, LLC will manage the company and oversee all of its operations. SSC is registered as an investment adviser under the Advisers Act. Our Adviser serves pursuant to the Investment Advisory Agreement in accordance with the Advisers Act, under which it receives a management fee as a percentage of our gross assets and incentive fees as a percentage of our ordinary income and capital gains from us.

Our Adviser also currently provides investment management services to several investment vehicles which are primarily special opportunities related to one or more specific transactions. In focusing on a broader sector-based credit and equity opportunity, our primary investment focus differs from that of other investments made by SSC, as SSC's other managed vehicles do not have the mandate to make discretionary investments other than for the purpose of the specific investments for which they were formed. However, there may be overlap in terms of our targeted investments. See “Certain Relationships And Related Party Transactions.”

We benefit from our Adviser’s ability to identify attractive investment opportunities, conduct diligence on and value prospective investments, negotiate investments and manage a portfolio of those investments. The principals of our Adviser have broad investment backgrounds, with prior experience at investment funds, investment banks and other financial services companies, and have developed a broad network of contacts within the private equity community. This network of contacts provides our principal source of investment opportunities.

The Adviser manages Silver Spike Sponsor, LLC, which is the sponsor of Silver Spike Acquisition Corp., a special purpose acquisition company. Silver Spike Acquisition Corp. completed its initial public offering in August 2019, and in June 2021 consummated a business combination with WM Holding Company, LLC, the leading technology and software infrastructure provider to the cannabis industry. In connection with the transaction, Silver Spike Acquisition Corp. changed its name to WM Technology, Inc. (“WM Technology”). The transaction provided \$579 million of gross proceeds to the combined company, implying a post-transaction equity value of approximately \$1.5 billion, and was the largest single financing in the cannabis sector to date.

In addition to our management team’s involvement with WM Technology, our management team has a history of success in the cannabis industry, including, but not limited to, to:

- Our Adviser’s CEO and founder, Scott Gordon, began investing in the cannabis health and wellness industry in 2013, and soon thereafter co-founded Egg Rock Holdings, LLC (“Egg Rock”). Egg Rock is the parent company of Papa & Barkley Essentials, LLC, a leading consumer-focused family of cannabis and CBD products. Mr. Gordon currently serves as a director of Egg Rock.
- Our Adviser’s Partner, Robert Josephson, has acted as a financial consultant to various companies in the cannabis industry since 2014, including Cronos Group Inc., WeedMd Inc., Lord Jones, Lune Rouge, and DNA Genetics.

The key principals and members of senior management and the Investment Committee of our Adviser are Scott Gordon, our Chief Executive Officer and our Adviser’s Partner and Chief Executive Officer, Gregory Gentile, our Chief Financial Officer, Chief Compliance Officer and Secretary, and our Adviser’s Partner, Chief Financial Officer and Chief Compliance Officer, William Healy, our Adviser’s Partner and Head of Capital Formation, Frank Kotsen, CFA, our Adviser’s Partner and Credit Portfolio Manager, Dino Colonna, CFA, our Adviser’s Partner and Credit Portfolio Manager, and Umesh Mahajan, our Adviser’s Credit Portfolio Manager.

### **Cannabis Market Overview**

The cannabis industry has experienced significant growth over the last several years. Canada legalized cannabis for adult use in 2018, and thirty-six states, the District of Columbia, Puerto Rico, Guam and the U.S. Virgin Islands have legalized some form of whole-plant cannabis cultivation, sales and use for certain medical purposes. Eighteen of those states and the District of Columbia, Guam and Northern Mariana have also legalized cannabis for adults for non-medical purposes. Eleven additional states have legalized low-THC/high-CBD extracts for select medical conditions. The cannabis industry is amongst the fastest growing industries in the world. 2020 estimated U.S. state-legal cannabis retail sales reached \$18.0 billion, up 48% year-over-year and is expected to reach approximately \$47.5 billion by 2026, a compound annual growth rate of over 17%.<sup>2</sup> We believe continued legalization of cannabis and the normalization of cannabis and its many uses - therapeutic, recreational and general health and wellness, are creating an attractive opportunity to invest in related businesses. At the same time, the cannabis industry is highly fragmented and subject to a complex regulatory framework, creating significant barriers to entry.

The transition of the cannabis and derivative products to a regulated and legal marketplace has been happening at a rapid pace over recent years, with full legalization in Canada (2018) and legislative momentum continuing to expand the U.S. market (eleven states passing medical or recreational referenda or otherwise legalizing or decriminalizing medical or recreational cannabis since the November 2020 elections). There have been hundreds of businesses launched across various sub-sectors of the cannabis industry, many of which have raised significant amounts of capital, mainly from retail and family office investors, in both public and private markets. In addition, large multinational alcohol and tobacco companies have made strategic investments into the Canadian cannabis sector to diversify their core business while protecting against potential market share loss to cannabis.

The cannabis capital markets have been volatile over recent years, much like other emerging industries in their early stages of growth. During the COVID-19 health and economic crisis, cannabis retail sales showed surprising resiliency and cannabis behaved more like a mature consumer staple as opposed to a consumer cyclical that is sensitive to the economic cycle. We witnessed two positive developments in the cannabis industry during early 2020: (1) most states deemed cannabis businesses essential businesses and (2) sales remained strong during this period, displaying resilient consumer demand. This industry momentum continued throughout 2020, with significant growth in sales and renewed optimism of favorable federal cannabis reforms after the Democrats won the presidency, maintained control of the House of Representatives and took narrow control of the Senate.

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<sup>2</sup> BDSA (July 2021) “BDSA’s detailed cannabis sales data from 2020 and predicted market growth by 2026”

Broadly speaking, the cannabis industry is still in its early stages, and we believe that businesses with strong management teams, deep operational expertise and financial acumen will thrive in this large and growing market. As cannabis markets continue to grow, there will be increased demand for capital on behalf of cannabis industry operators and ancillary companies serving the industry.

The cannabis capital markets, both credit and equity, are still currently dominated by small funds and family offices, which we believe lack the experience and capital to navigate such a dynamic and complex environment. Furthermore, the vast majority of banks and institutional investment funds are not lending to the cannabis industry, given the current regulatory environment, creating a void in the market for credit-based solutions. Historically, cannabis firms have funded operations with equity, but as the industry matures and companies become more sensitive to equity dilution, we expect demand for credit-based solutions to increase. Market turbulence also added to the significant decrease in both debt and equity capital markets activity in 2020.

The cannabis industry entered 2021 with optimism from a federal reform perspective, but these hopes started to fade by mid-February as progress seemed to stall among congressional leaders. Even with lowered expectations of federal reform, activity in the cannabis capital markets continued to thrive, as evidenced by substantial increases in equity and debt issuances, as well as merger and acquisition activity, in 2021.

#### Public and Private Cannabis Capital Raises:

Year	Equity	Debt
2018	\$11.6bn	\$2.5bn
2019	\$8.1bn	\$3.2bn
2020	\$2.3bn	\$1.3bn
2021 YTD (11/5/2021)	\$6.7bn	\$4.5bn

*Source: Viridian Capital Advisors*

#### Public and Private Cannabis Mergers and Acquisitions:

Year	Deals
2020	74
2021 YTD (11/5/2021)	272

*Source: Viridian Capital Advisors*

We expect capital markets activity to continue to expand off the lows of 2020, especially with demand for credit-based solutions, as companies prefer less dilutive forms of growth capital. The lack of competition and financing options for cannabis businesses has created an opportune environment for us to make attractive growth capital investments from an advantageous position – the ability to drive terms and enhance structural protections while capturing above average risk-adjusted returns.

#### Potential Market Trends

We believe the middle-market lending environment provides opportunities for us to meet our goal of making investments that generate attractive risk-adjusted returns based on a combination of the following factors, which continue to remain true in the current environment, even with the economic shutdown resulting from the COVID-19 pandemic.

**Limited Availability of Capital for Cannabis Companies.** We believe that regulatory and structural changes in the market have reduced the amount of capital available generally to U.S. middle-market companies and specifically to cannabis companies. We believe that many commercial and investment banks have, in recent years, de-emphasized their service and product offerings to middle-market businesses in favor of lending to large corporate clients and managing capital markets transactions. In addition, these lenders may be constrained in their ability to underwrite and hold bank loans and high-yield securities for middle-market issuers as they seek to meet existing and future regulatory capital requirements. We also believe that there is a lack of market participants that are willing to hold meaningful amounts of certain middle-market loans. As a result, we believe our ability to minimize syndication risk for a company seeking financing by being able to hold its loans without having to syndicate them, coupled with reduced capacity of traditional lenders to serve the middle-market, present an attractive opportunity to invest in middle-market companies.

**Robust Demand for Debt and Equity Capital.** We believe U.S.-based cannabis companies will continue to require access to debt capital to support growth, refinance existing debt, and finance acquisitions. We expect that private equity sponsors and entrepreneurs will continue to pursue acquisitions and leverage their equity investments with secured and unsecured loans provided by companies such as us.

**Attractive Investment Dynamics.** An imbalance between the supply of, and demand for, cannabis debt capital creates attractive pricing dynamics. We believe the directly negotiated nature of direct lending also generally provides more favorable terms to the lender, including stronger covenant and reporting packages, better call protection, and lender-protective change of control provisions. Additionally, we believe our expertise in credit selection and in investing in the cannabis industry provides a strong basis for success.

**Conservative Capital Structures.** Given the lack of credit deployed in the federally legal cannabis industry, companies have been almost exclusively funded with equity capital from entrepreneurs, family offices and, to a lesser extent, private equity firms. The significant amount of equity invested in companies in the industry should provide us with opportunities to lend to companies that have a larger percentage of equity as a percentage of their total capitalization than other middle-market companies. With more conservative capital structures, federally legal cannabis companies can have higher levels of cash flows available to service their debt. In addition, we expect federally legal cannabis companies to have simpler capital structures than larger borrowers, which facilitates a streamlined underwriting process and, when necessary, restructuring process.

**Attractive Opportunities in Investments in Loans.** We invest in senior secured or unsecured loans, subordinated loans or mezzanine loans, equity and equity-related securities. We believe that opportunities in loans are significant because of the floating rate structure of most senior secured debt issuances and because of the strong defensive characteristics of these types of investments. Given the current low interest rate environment, we believe that debt issued with floating interest rates offer a superior return profile as compared with fixed-rate investments, since floating rate structures are generally less susceptible to declines in value experienced by fixed-rate securities in a rising interest rate environment. Senior secured debt also provides strong defensive characteristics. Senior secured debt has priority in payment among an issuer's security holders whereby holders are due to receive payment before junior creditors and equity holders. Further, these investments are secured by the issuer's assets, which may provide protection in the event of a default.

**Attractive Opportunities in Equity Investments.** We believe that opportunities to invest in the equity of federally legal cannabis businesses are significant. We expect that our ability to identify emerging businesses and to provide credit to the industry will provide us with proprietary equity investment opportunities. Our management team's experience investing in and operating businesses in the federally legal cannabis industry will help us identify high-quality businesses, and our management team's expertise will be beneficial to our portfolio companies.

## **Business Strategy**

Our investment objective is to maximize risk-adjusted returns on equity for our shareholders. We will seek to capitalize on what we believe to be nascent cannabis industry growth and drive return on equity by generating current income from our debt investments and capital appreciation from our equity and equity-related investments. We have adopted the following business strategy to achieve our investment objective. **However, there can be no assurances that we will be able to successfully implement our business strategy and, as a result, meet our investment objective.**

Our business strategy is to identify investment opportunities in businesses in the cannabis industry. All of our investments are designed to be compliant with all applicable laws and regulations within the jurisdictions in which they are made or to which we are otherwise subject, including U.S. federal laws. We believe that there is an opportunity to take advantage of a newly emerging industry, with a variety of established operators seeking access to capital and managerial expertise. We intend to leverage our team's collective operating, technical, regulatory and legal expertise to build a strong business with competitive advantages to emerge as a leading public company in the space.

As the industry continues to transition to a new legislative and regulatory framework, we believe that many companies will need a partner that can assist in providing a level of operational and financial expertise to support their growth. Our team includes a variety of investment, operational and healthcare professionals who will provide operating, technical, regulatory and legal expertise to evaluate investment opportunities. Our team includes Scott Gordon, Gregory Gentile, Dino Colonna and Robert Josephson, all of whom have extensive expertise in cannabis-related industries. Our team consists of professionals who have decades of experience in capital markets globally and have extensive scientific and medical knowledge of the plant and its many compounds, and includes entrepreneurs and founders of consumer-facing businesses.

Our plan is to leverage our management team's networks of industry relationships, knowledge and experience to become the leading investor in the legal cannabis industry. Over the course of their careers, the members of our management team have developed a broad network of contacts and corporate relationships that we believe will serve as a useful source of acquisition opportunities. We plan to leverage relationships with management teams of public and private companies, investment professionals at private equity firms and other financial sponsors, owners of private businesses, investment bankers, restructuring advisers, consultants, attorneys and accountants, which we believe should provide us with a number of investment opportunities.

### **Potential Competitive Advantages**

We believe that our Adviser is one of only a select group of specialty lenders that has its depth of knowledge, experience, and track record in lending to businesses in the cannabis industry. Our other potential competitive advantages include:

***Our Adviser has deep industry and operating expertise on its management team and advisory board.*** Our Adviser has the ability to tap into this expertise for each of our target investment opportunities. The expertise, knowledge and experience of these individuals allows them to understand and evaluate the business plans, products and financing needs of businesses in the cannabis industry.

***Direct origination networks that benefit from relationships with entrepreneurs, business brokers and private equity firms.*** Our Adviser seeks to be the first contact for professionals focused on raising capital for businesses in the cannabis industry. Given the history of our Adviser's management team and advisory board as operators and investors in the industry, they have established relationships with the major investment banks and business brokers in the industry. Our Adviser also focuses on sourcing investment opportunities from private equity and venture capital firms that have been active in the industry. Given our Adviser's reputation in the industry, it also receives referrals directly from executive officers of businesses in the cannabis industry.

***A dedicated staff of professionals covering investment origination and underwriting, as well as portfolio management functions.*** Our Adviser has a broad team of professionals focused on every aspect of the cannabis industry and the investment lifecycle. Our Adviser has an investment team that manages and oversees our investment process from identification of investment opportunity through negotiations of final term sheet and investment in a portfolio company. The team members serving our investment management and oversight functions have significant industry and operating experience.

### **Investment Criteria**

Consistent with our business strategy, our Adviser has identified the following general, non-exclusive criteria and guidelines that we believe are important in evaluating prospective investment opportunities. We intend to focus on businesses that we believe:

- ***exhibit institutional-level operations and financial controls.*** We intend to identify businesses in the cannabis space that have leading competitive positions, and the underlying infrastructure and operations to survive and excel in this dynamic industry;
- ***have durable competitive advantages that are differentiated in the sector.*** We intend to invest in businesses that not only benefit from secular tailwinds in the industry, but also exhibit hard-to-replicate competitive advantages amongst their peers;
- ***are fundamentally sound with consistent operational performance and free cash flow generation.*** We expect to identify businesses that have historically exhibited profitability and strong cash flow generation.

Our management team has a proven track record accelerating growth of companies with strong past performance;

- ***are at an inflection point, such as requiring additional capital to achieve a growth strategy.*** We intend to look for businesses that have clear opportunities for long-term sustainable growth, but which require our capital or expertise to achieve a growth strategy;
- ***have the potential to further improve their performance during our investment horizon.*** We intend to seek to identify businesses where we believe we can enhance results by leveraging our transactional, financial, managerial and investment experience as well as our extensive networks and insights. We believe our management team has the right skills and capabilities to enhance companies' results and consolidate competitive positions in their sectors; and
- ***exhibit unrecognized value and desirable returns on capital.*** We will look for businesses that we believe have been undervalued by the marketplace based on our analysis and due diligence review.

These criteria are not intended to be exhaustive. Any evaluation relating to the merits of a particular investment opportunity may be based, to the extent relevant, on these general criteria and guidelines as well as other considerations, factors and criteria that our management may deem relevant.

## **Investments**

We will seek to invest in portfolio companies primarily in the form of loans (secured and unsecured), but may include equity warrants and direct equity investments. The loans typically pay interest with some amortization of principal. Interest is generally paid on a floating rate basis, often with a floor, on the LIBOR rate. We will generally seek to obtain security interests in the assets of our portfolio companies that serve as collateral in support of the repayment of these loans. This collateral may take the form of first or second priority liens on the assets of a portfolio company. In some of our portfolio investments, we expect to receive nominally priced equity warrants and/or make direct equity investments in connection with a debt investment. In addition, a portion of our portfolio may be comprised of derivatives, including total return swaps.

We expect that our loans will typically have final maturities of three to six years. However, we expect that our portfolio companies often may repay these loans early, generally within three years from the date of initial investment.

We will seek to tailor the terms of the investment to the facts and circumstances of the transaction and the prospective portfolio company, negotiating a structure that protects our rights and manages our risk while creating incentives for the portfolio company to achieve its business plan and improve its profitability. We will seek to limit the downside potential of our investments by negotiating covenants in connection with our investments that afford our portfolio companies flexibility in managing their businesses, consistent with preservation of our capital. Such restrictions may include affirmative and negative covenants, default penalties, lien protection, change of control provisions and board rights, including either observation or participation rights.

## **Investment Process**

### ***Investment Originations; New Opportunities Referred***

We have a multi-channel sourcing strategy focused on entrepreneurs, venture capital firms, private equity firms and investment banks, as well as brokers who focus on our industry. We seek to interact directly with operating businesses owned and advised by these groups, and we typically negotiate investment terms directly with potential portfolio companies. We focus on businesses with strong management teams who have a successful history managing their companies. We have a nationwide network, and we have built relationships with these operators and investors. We have established SSC as a leading provider of financial solutions for the cannabis industry.

When a new investment opportunity is identified, a member of our investment team typically speaks with the prospective portfolio company to gather information about the business and its financing and capital needs. If, following this call, we see an opportunity as a potential fit with our investment strategy and criteria, we ask the



prospective portfolio company to submit an information package, which includes detailed information regarding the portfolio company's products or services, capitalization, customers, historical financial performance, and forward looking financial projections.

Once received, the portfolio company's information package is then reviewed by our investment team and a summary investment memorandum is shared with our Adviser's Investment Committee.

#### ***Preliminary Due Diligence and Executive Summary***

The next phase of the due diligence process involves a structured call with the management team of the prospective portfolio company. A detailed discussion including a discussion of the prospective portfolio company's products or services, market dynamics, business model, historical financial performance and projections, management team, existing investors and capital structure and debt. Following the management call, if the opportunity still appears to be worthy of consideration, an executive summary memorandum is prepared by the due diligence team for consideration and voting by our Adviser's Investment Committee. The executive summary memorandum is distributed to the Investment Committee, and the deal terms for the investment are defined. If approved by the Investment Committee, we issue a term sheet to the prospective portfolio company.

#### ***Confirmatory Due Diligence and On-Site Meeting***

If the term sheet offered by us is accepted by the prospective portfolio company, the process of obtaining additional confirmatory due diligence begins. The confirmatory due diligence process typically includes calls with the key constituents of the portfolio company, as well as key customers, suppliers, partners, or other stakeholders as may be deemed relevant by the due diligence team. Additional financial analysis is performed, in order to confirm the assumptions that were made prior to term sheet issuance. During this process, we will engage senior members of our investment team and advisory board to discuss industry dynamics and evaluate the business model of the portfolio company.

The final step in the confirmatory diligence process involves one or more on-site meetings, at which members of our due diligence team meet with the management team of the prospective portfolio company for a final review of the portfolio company's financial performance and forward-looking plans. These meetings are typically held at the business offices of the portfolio company; however, occasionally the meeting will be held via video teleconference if travel to the portfolio company is not possible. One or more members of our Adviser's Investment Committee will attend the on-site meeting, if possible.

#### ***Underwriting Report and Investment Committee Vote***

Assuming that the confirmatory due diligence process reveals no issues that would cause the due diligence team to recommend against the proposed investment, the due diligence team prepares a final Investment Committee Memorandum, which is distributed to our Adviser's Investment Committee. The Investment Committee then meets to discuss and review the investment terms regarding the proposed investment. Unanimous agreement of the Investment Committee is required to approve the transaction.

## ***Investment Management and Oversight***

One or two members of the investment team will be responsible for monitoring the portfolio company. Beyond the dedicated portfolio management team, all of our management team members and investment professionals are typically involved at various times with our portfolio companies and investments. Our portfolio management team reviews our portfolio companies' monthly or quarterly financial statements and compares actual results to the portfolio companies' projections. Additionally, the portfolio management team may initiate periodic calls with the portfolio company's venture capital partners and its management team, and may obtain observer rights on the portfolio company's board of directors. Our management team and investment professionals anticipate potential problems by monitoring reporting requirements and having frequent calls with the management teams of our portfolio companies.

## **Underwriting**

### ***Underwriting Process and Investment Approval***

We intend to make our investment decisions only after consideration of a number of factors regarding the potential investment, including but not limited to: (i) historical and projected financial performance; (ii) company- and industry-specific characteristics, such as strengths, weaknesses, opportunities and threats; (iii) composition and experience of the management team; and (iv) track record of the private equity sponsor leading the transaction. Our Adviser will use a proprietary scoring system to evaluate each opportunity. This methodology will be employed to screen a high volume of potential investment opportunities on a consistent basis.

If an investment is deemed appropriate to pursue, a more detailed and rigorous evaluation is made along a variety of investment parameters, not all of which may be relevant or considered in evaluating a potential investment opportunity. The following outlines the general parameters and areas of evaluation and due diligence we intend to utilize for investment decisions, although not all factors will necessarily be considered or given equal weighting in the evaluation process.

### ***Management Assessment***

Our Adviser makes an in-depth assessment of the management team, including evaluation along several key metrics:

- The number of years in their current positions;
- Track record;
- Industry experience;
- Management incentive, including the level of direct investment in the enterprise;
- Background investigations; and
- Completeness of the management team (lack of positions that need to be filled).

### ***Industry Dynamics***

An evaluation of the industry is undertaken by our Adviser that considers several factors. If considered appropriate, industry experts will be consulted or retained. The following factors are analyzed by our Adviser:

- Sensitivity to economic cycles;
- Competitive environment, including number of competitors, threat of new entrants or substitutes;
- Fragmentation and relative market share of industry leaders;
- Growth potential; and
- Regulatory and legal environment.

## ***Business Model and Financial Assessment***

Prior to making an investment decision, our Adviser will undertake a review and analysis of the financial and strategic plans for the potential investment. There is significant evaluation of and reliance upon the due diligence performed by the private equity sponsor and third-party experts including accountants and consultants. Areas of evaluation include:

- Historical and projected financial performance;
- Quality of earnings, including source and predictability of cash flows;
- Customer and vendor interviews and assessments;
- Potential exit scenarios, including probability of a liquidity event;
- Internal controls and accounting systems; and
- Assets, liabilities and contingent liabilities.

## ***Private Equity Sponsor***

Among the most critical due diligence investigations is the evaluation of the private equity sponsor making the investment. A private equity sponsor is typically the controlling stockholder upon completion of an investment and as such is considered critical to the success of the investment. The private equity sponsor is evaluated along several key criteria, including:

- Investment track record;
- Industry experience;
- Capacity and willingness to provide additional financial support to the company through additional capital contributions, if necessary; and
- Reference checks.

## **Portfolio Management**

### ***Involvement in our Portfolio Companies***

As a BDC, we will be obligated to offer to provide managerial assistance to our portfolio companies and to provide it if requested. In fact, we seek investments where such assistance is appropriate. We will, however, limit the offered (and any provided) assistance to services that would generally help any business operate in legal compliance and with good corporate governance. We will not offer any services that could be construed as assisting a borrower to grow, manufacture, or sell cannabis. The services will be limited to: assistance relating to accounting and financial reporting best practices; assistance relating to tax planning and preparation; recommendations on accounting and financial reporting technology and operating systems, and assistance in negotiating with vendors and licensors of such technology; providing analyses of existing financing arrangements, assistance in negotiating additional debt financing or restructuring existing debt financing, and introductions to banks and other sources of capital; advice with respect to corporate best practices and corporate governance, including advice with respect to board structure and governance and implementing corporate codes of ethics and guidelines for transactions with related parties; assistance in preparing a portfolio company to become a public company, including guidance on public company accounting and financial reporting standards; assistance in corporate insurance planning, including analyses of appropriate coverage levels and insurance terms, and negotiating with insurance providers; assistance with human resources best practices; legal counsel referrals; and guidance on cash management.

We also monitor the financial trends of each portfolio company to assess the appropriate course of action for each company and to evaluate overall portfolio quality. We have several methods of evaluating and monitoring the performance of our investments, including, but not limited to, the following:

- Review of monthly and quarterly financial statements and financial projections for portfolio companies;
- Periodic and regular contact with portfolio company management to discuss financial position requirements and accomplishments;
- Attendance at board meetings;
- Periodic formal update interviews with portfolio company management and, if appropriate, the private equity sponsor; and
- Assessment of business development success, including product development, profitability and the portfolio company's overall adherence to its business plan.

## **Rating Criteria**

In addition to various risk management and monitoring tools, we will use an investment rating system to characterize and monitor the credit profile and our expected level of returns on each investment in our portfolio. We will use a five-level numeric rating scale. This system is intended primarily to reflect the underlying risk of a portfolio investment relative to our initial cost basis in respect of such portfolio investment (i.e., at the time of origination or acquisition), although it may also take into account the performance of the portfolio company's business, the collateral coverage of the investment and other relevant factors. The rating system is as follows:

- Investments rated 1 involve the least amount of risk to our initial cost basis. The borrower is performing above expectations, and the trends and risk factors for this investment since origination or acquisition are generally favorable.
- Investments rated 2 involve an acceptable level of risk that is similar to the risk at the time of origination or acquisition. The borrower is generally performing as expected and the risk factors are neutral to favorable. All investments or acquired investments in new portfolio companies are initially assessed a rating of 2.
- Investments rated 3 involve a borrower performing below expectations and indicates that the loan's risk has increased somewhat since origination or acquisition.
- Investments rated 4 involve a borrower performing materially below expectations and indicates that the loan's risk has increased materially since origination or acquisition. In addition to the borrower being generally out of compliance with debt covenants, loan payments may be past due (but generally not more than 120 days past due).
- Investments rated 5 involve a borrower performing substantially below expectations and indicates that the loan's risk has increased substantially since origination or acquisition. Most or all of the debt covenants are out of compliance and payments are substantially delinquent. Loans rated 5 are not anticipated to be repaid in full and we will reduce the fair market value of the loan to the amount we anticipate will be recovered.

In the event that we determine that an investment is underperforming, or circumstances suggest that the risk associated with a particular investment has significantly increased, we will undertake more aggressive monitoring of the affected portfolio company. While our investment rating system will identify the relative risk for each investment, the rating alone does not dictate the scope and/or frequency of any monitoring that we perform. The frequency of our monitoring of an investment will be determined by a number of factors, including but not limited to the trends in the financial performance of the portfolio company, the investment structure and the type of collateral securing our investment, if any.

## **Valuation of Portfolio Investments and NAV Determinations**

We will generally invest in illiquid loans issued by private middle-market companies. All of our investments are recorded at fair value as determined in good faith by our Board of Directors.

Authoritative accounting guidance defines fair value as the price that would be received to sell an asset or paid to transfer a liability in an orderly transaction between market participants at the measurement date. Where available, fair value is based on observable market prices or parameters or derived from such prices or parameters. Where observable prices or inputs are not available or reliable, valuation techniques are applied. These valuation techniques involve some level of management estimation and judgment, the degree of which is dependent on the price transparency for the investments or market and the investments' complexity.

Investment transactions are recorded on the trade date at fair value. Realized gains or losses are measured by the difference between the net proceeds received (excluding prepayment fees, if any) and the amortized cost basis of the investment using the specific identification method without regard to unrealized gains or losses previously recognized, and include investments charged off during the period, net of recoveries. The net change in unrealized gains or losses primarily reflects the change in investment values, including the reversal of previously recorded unrealized gains or losses with respect to investments realized during the period. We record current-period changes in fair value of investments that are measured at fair value as a component of the net change in unrealized gains (losses) on investments in the consolidated statement of operations.

Investments for which market quotations are readily available are typically valued at the bid price of those market quotations. To validate market quotations, we utilize a number of factors to determine if the quotations are representative of fair value, including the source and number of the quotations. Debt and equity securities that are not publicly traded or whose market prices are not readily available, as is the case for substantially all of our investments, are valued at fair value as determined in good faith by our Board of Directors, based on, among other things, the input of the Adviser, our Audit Committee and independent third-party valuation firm(s) engaged at the direction of the Board of Directors.

As part of the valuation process, the Board of Directors takes into account relevant factors in determining the fair value of our investments, including: the estimated enterprise value of a portfolio company (i.e., the total fair value of the portfolio company's debt and equity), the nature and realizable value of any collateral, the portfolio company's ability to make payments based on its earnings and cash flow, the markets in which the portfolio company does business, a comparison of the portfolio company's securities to any similar publicly traded securities, and overall changes in the interest rate environment and the credit markets that may affect the price at which similar investments may be made in the future. When an external event such as a purchase transaction, public offering or subsequent equity sale occurs, the Board of Directors considers whether the pricing indicated by the external event corroborates its valuation.

The Board of Directors undertakes a multi-step valuation process, which includes, among other procedures, the following:

- With respect to investments for which market quotations are readily available, those investments will typically be valued at the bid price of those market quotations;
- With respect to investments for which market quotations are not readily available, the valuation process begins with the independent valuation firm(s) providing a preliminary valuation of each investment to the Adviser's valuation committee;
- Preliminary valuation conclusions are documented and discussed with the Adviser's valuation committee. Agreed upon valuation recommendations are presented to the Audit Committee;
- The Audit Committee reviews the valuation recommendations and recommends values for each investment to the Board of Directors; and
- The Board of Directors reviews the recommended valuations and determines the fair value of each investment.

We conduct this valuation process on a quarterly basis.

We apply Financial Accounting Standards Board Accounting Standards Codification 820, Fair Value Measurements ("ASC 820"), as amended, which establishes a framework for measuring fair value in accordance with U.S. GAAP and required disclosures of fair value measurements. ASC 820 determines fair value to be the price that would be received for an investment in a current sale, which assumes an orderly transaction between market participants on the measurement date. Market participants are defined as buyers and sellers in the principal or most advantageous market (which may be a hypothetical market) that are independent, knowledgeable, and willing and able to transact. In accordance with ASC 820, we consider the principal market to be the market that has the greatest volume and level of activity. ASC 820 specifies a fair value hierarchy that prioritizes and ranks the level of observability of inputs used in determination of fair value. In accordance with ASC 820, these levels are summarized below:

- Level 1 – Valuations based on quoted prices in active markets for identical assets or liabilities that we have the ability to access;
- Level 2 – Valuations based on quoted prices in markets that are not active or for which all significant inputs are observable, either directly or indirectly; and
- Level 3 – Valuations based on inputs that are unobservable and significant to the overall fair value measurement.

Transfers between levels, if any, are recognized at the beginning of the quarter in which the transfer occurred. In addition to using the above inputs in investment valuations, we apply the valuation policy approved by our Board of Directors that is consistent with ASC 820. Consistent with the valuation policy, we evaluate the source of the inputs, including any markets in which our investments are trading (or any markets in which securities with similar attributes are trading), in determining fair value. When an investment is valued based on prices provided by reputable dealers or pricing services (that is, broker quotes), we subject those prices to various criteria in making the determination as to whether a particular investment would qualify for treatment as a Level 2 or Level 3 investment. For example, we, or the independent valuation firm(s), review pricing support provided by dealers or pricing services in order to determine if observable market information is being used, versus unobservable inputs.

Due to the inherent uncertainty of determining the fair value of investments that do not have a readily available market value, the fair value of our investments may fluctuate from period to period. Additionally, the fair value of such investments may differ significantly from the values that would have been used had a ready market existed for such investments and may differ materially from the values that may ultimately be realized. Further, such investments are generally less liquid than publicly traded securities and may be subject to contractual and other restrictions on resale. If we were required to liquidate a portfolio investment in a forced or liquidation sale, it could realize amounts that are different from the amounts presented and such differences could be material.

In addition, changes in the market environment and other events that may occur over the life of the investments may cause the gains or losses ultimately realized on these investments to be different than the unrealized gains or losses reflected previously.

In December 2020, the SEC adopted Rule 2a-5 under the 1940 Act, which is intended to address valuation practices and the role of the board of directors with respect to the fair value of the investments of a registered investment company or business development company. Among other things, Rule 2a-5 will permit a fund's board to designate the fund's primary investment adviser to perform the fund's fair value determinations, which will be subject to board oversight and certain reporting and other requirements intended to ensure that the board receives the information it needs to oversee the investment adviser's fair value determinations. Compliance with Rule 2a-5 will not be required until September 2022. We continue to review Rule 2a-5 and its impact on our valuation policies and related practices.

#### ***Quarterly NAV Determination***

We will determine the NAV per share of our common stock on a quarterly basis. The NAV per share of our common stock is equal to the value of our total assets minus liabilities divided by the total number of shares of common stock outstanding. Our liabilities will include amounts which we have accrued under our Investment Advisory Agreement, including the management fee, Incentive Fee on Income and Incentive Fee on Capital Gains, the latter of which will be accrued based upon the cumulative realized and unrealized capital appreciation in our portfolio.

#### ***Determinations in Connection with Certain Offerings***

In connection with certain future offerings of shares of our common stock, our Board of Directors will be required to make the determination that we are not selling shares of our common stock at a price below the then current net asset value of our common stock, exclusive of any distributing commission or discount (which net asset value shall be determined as of a time within 48 hours, excluding Sundays and holidays, next preceding the time of such determination). Our Board of Directors will consider the following factors, among others, in making such determination:

- the net asset value of our common stock disclosed in the most recent periodic report that we filed with the SEC;
- our management's assessment of whether any material change in the net asset value of our common stock has occurred (including through the realization of gains on the sale of our portfolio securities) during the period beginning on the date of the most recently disclosed net asset value

of our common stock and ending as of a time within 48 hours (excluding Sundays and holidays) of the sale of our common stock; and

the magnitude of the difference between (i) a value that our Board of Directors has determined reflects the current (as of a time within 48 hours, excluding Sundays and holidays) net asset value of our common stock, which is based upon the net asset value of our common stock disclosed in the most recent periodic report that we filed with the SEC, as adjusted to reflect our management's assessment of any material change in the net asset value of our common stock since the date of the most recently disclosed net asset value of our common stock, and (ii) the offering price of the shares of our common stock in the proposed offering.

Moreover, to the extent that there is a possibility that we may (i) issue share of common stock at a price per share below the then current net asset value per share at the time at which the sale is made or (ii) trigger the undertaking (which we provide in certain registration statements we file with the SEC) to suspend the offering of shares of our common stock if the net asset value per share fluctuates by certain amounts in certain circumstances until the prospectus is amended, our Board of Directors will elect, in the case of clause (i) above, either to postpone the offering until such time that there is no longer the possibility of the occurrence of such event or to undertake to determine the net asset value per share of common stock within two days prior to any such sale to ensure that such sale will not be below our then current net asset value per share, and, in the case of clause (ii) above, to comply with such undertaking or to undertake to determine the net asset value per share to ensure that such undertaking has not been triggered.

These processes and procedures are part of our compliance policies and procedures. Records will be made contemporaneously with all determinations described in this section and these records will be maintained with other records that we are required to maintain under the 1940 Act.

## **Competition**

We will compete for investments with a number of investment funds (including private equity funds), as well as traditional financial services companies such as commercial banks and other sources of financing. Many of these entities have greater financial and managerial resources than we do. We believe we are able to be competitive with these entities primarily on the basis of the experience and contacts of our management team, our responsive and efficient investment analysis and decision-making processes, the investment terms we offer, and our willingness to make smaller investments.

We believe that some of our competitors make loans with interest rates and returns that are comparable to or lower than the rates and returns that we target. Therefore, we do not seek to compete solely on the interest rates that we offer to potential portfolio companies. For additional information concerning the competitive risks we face, see "Risk Factors — Risks Relating to Our Business and Structure — We may face increasing competition for investment opportunities, which could reduce returns and result in losses."

## **Employees**

We do not have any employees. Our day-to-day investment operations will be managed by our Adviser. See "Investment Advisory Agreement." Our Adviser utilizes a team of six investment professionals. We will reimburse our administrator, SSC, for the allocable portion of overhead and other expenses incurred by it in performing its obligations under an Administration Agreement, including our allocable portion of the costs of compensation of our CFO and CCO and their respective staffs (based on a percentage of time such individuals devote, on an estimated basis, to our business affairs). See "Administration Agreement."

## **Properties**

We do not own any real estate or other physical properties material to our operations. We will utilize office space that is leased by our affiliates for our principal executive office at 660 Madison Avenue, Suite 1600, New York, NY 10065. We believe that our office facilities are adequate for our business as presently conducted, although we periodically evaluate alternative options.

**Legal Proceedings**

Although we may, from time to time, be involved in litigation arising out of our operations in the normal course of business or otherwise, we are currently not a party to any pending material legal proceedings.



## MANAGEMENT

Our business and affairs are managed under the direction of our Board of Directors. Our Board of Directors appoints our officers, who serve at the discretion of the Board of Directors. The responsibilities of the Board of Directors include, among other things, the oversight of our investment activities, the quarterly valuation of our assets, oversight of our financing arrangements, and corporate governance activities. The Board of Directors has an Audit Committee, a Nominating and Corporate Governance Committee and a Compensation Committee, and may establish additional committees from time to time as necessary.

### Board of Directors and Executive Officers

Our Board of Directors consists of five members, three of whom are classified under applicable Nasdaq Stock Market corporate governance regulations by our Board of Directors as “independent” directors and under Section 2(a)(19) of the 1940 Act as non-interested persons. Pursuant to our charter, our Board of Directors is divided into three classes. Each class of directors will hold office for a three-year term. At each annual meeting of our stockholders, the successors to the class of directors whose terms expire at such meeting will be elected to hold office for a term expiring at the annual meeting of stockholders held in the third year following the year of their election. Each director will hold office for the term to which he or she is elected and until his or her successor is duly elected and qualifies. Our charter also gives our Board of Directors sole authority to appoint directors to fill vacancies that are created either through an increase in the number of directors or due to the resignation, removal or death of any director.

#### Directors

Information regarding our Board of Directors is set forth below. We have divided the directors into two groups — independent directors and interested directors. Interested directors are “interested persons” of SSIC as defined in Section 2(a)(19) of the 1940 Act.

The address for each director is *c/o* Silver Spike Investment Corp., 660 Madison Avenue, Suite 1600, New York, NY 10065.

Name	Year of Birth	Director Since	Expiration of Term
<i>Independent Directors</i>			
Vivek Bunty Bohra	1974	2021	2022
Americo Da Corte	1950	2021	2023
Tracey Brophy Warson	1962	2021	2023
<i>Interested Directors</i>			
Michael W. Chorske(1)	1968	2021	2024
Scott Gordon(2)	1961	2021	2024

(1) Mr. Chorske may be deemed to be an “interested person,” as defined in Section 2(a)(19) of the 1940 Act, of SSIC by virtue of the affiliation of a member of his immediate family with a principal underwriter of SSIC.

(2) Mr. Gordon may be deemed to be an “interested person,” as defined in Section 2(a)(19) of the 1940 Act, of SSIC by virtue of his affiliation with our Adviser.

## Executive Officers

The following persons serve as our executive officers in the following capacities:

Name	Year of Birth	Position(s) Held
Scott Gordon	1961	Chief Executive Officer
Gregory Gentile	1976	Chief Financial Officer, Chief Compliance Officer and Secretary

The address for each executive officer is c/o Silver Spike Investment Corp., 660 Madison Avenue, Suite 1600, New York, NY 10065.

## Biographical Information

### Independent Directors

- Vivek Bunt Bohra*. Mr. Bohra is chief executive officer of Biologic Pte, an advisory and investment firm based in Singapore. Mr. Bohra previously served as the CEO of Goldman Sachs Services in India and was responsible for all functions present in the firm's second largest office as well as integrating functions in Bengaluru and Singapore, in line with the firm's global location strategy. Mr. Bohra was a member of several committees at the firm, including the Partnership Committee, Asia Pacific Management Committee, Asia Pacific Capital Committee, Global Recruiting Council, and ASEAN Leadership Group, and served on the Pine Street Board of Directors. Prior to that, Mr. Bohra was global head of the Structured Product Syndicate desk in the Fixed Income, Currency and Commodities Division in New York. He was also co-head of the Structured Finance Group in the Americas, ran warehouse financing, and was a member of the Structured Finance Capital Committee. Mr. Bohra joined Goldman Sachs in 1996 in the J. Aron Currency and Commodities Division, where he traded commodities for four years in New York and London. He spent one year working on the development and launch of Intercontinental Exchange (NYSE: ICE), before becoming franchise manager of the Commodities and Futures Services business units. He was named managing director in 2005 and partner in 2010. Mr. Bohra is a fellow of Aspen Institute's India Leadership Initiative, a World Economic Forum Young Global Leader, serves on the Advisory Board of the MIT Sloan Finance Group, is a member of the Young Presidents' Organization, and previously served on the Asia Society Corporate Diversity Council. He earned dual SB degrees in Chemical Engineering and Management Science from MIT in 1996 and was awarded a certificate of completion for the Global Leadership and Public Policy for the 21st Century Program at Harvard Kennedy School in 2016. Additionally, he has completed executive education programs at Oxford University and the Lee Kuan Yew School of Public Policy at National University of Singapore.

We believe Mr. Bohra's experience in and knowledge of the financial services industry make him qualified to serve as a member of our Board of Directors.

Mr. Bohra resides outside of the United States and all or a significant portion of his assets are located outside the United States. Mr. Bohra does not have an authorized agent in the United States to receive service of process. As a result, it may not be possible for investors to effect service of process within the United States or to enforce against him in U.S. court judgments predicated upon the civil liability provisions of U.S. securities laws. It may also not be possible to enforce against Mr. Bohra in foreign courts judgments of U.S. courts or liabilities in original actions predicated upon civil liability provisions of the United States. Further, it is not certain that such courts would enforce, in an original action, liabilities against Mr. Bohra predicated solely on U.S. federal securities laws.

- Americo Da Corte*. Mr. Da Corte has over four decades of experience in asset management and lending, with a focus on risk management and investments in emerging markets. From 2013 to present, Mr. Da Corte has been the Chief Operating Officer and Risk Manager for Waypoint Asset Management LLC, a boutique asset manager focused on distressed and special situations in emerging markets. Prior to joining Waypoint, Mr. Da Corte co-founded Forum Asset Management in 2001, where he was a Principal until 2012. From 1999 to 2001, Mr. Da Corte was a Managing Director of Darby Overseas Investments, and from 1990 to 1999 Mr. Da Corte was a Managing Director at ING.

We believe Mr. Da Corte's experience in and knowledge of the financial services industry, and his experience in risk management and emerging markets, make him qualified to serve as a member of our Board of Directors.

- Tracey Brophy Warson*. Ms. Warson is a strategic advisor and director to companies in Clean Energy, AgTech, FinTech and Cannabis, and she is a private investor in a diverse portfolio of early state businesses. Ms. Warson has more than 30 years of experience building financial services businesses. Ms. Warson was CEO of Citi Private Bank from 2014-2019, and she served as Chairperson of Citi Private Bank North America from 2019-2020. As CEO of Citi Private Bank in North America, Ms. Warson grew the business in revenues substantially, and oversaw over \$230 billion in client business volume. Under her leadership and vision, Citi Private Bank North America received numerous industry recognitions and awards. Prior to her role as CEO, she was Global Market Manager for the Western U.S. from 2010 to 2014. From 2014-2018, Ms. Warson was the co-chair of Citi Women, Citi's global strategy to focus on the advancement of women as leaders and business drivers. In this role she led the firm's progress in pay equity, representation goal setting and in having Citi sign the Women's Empowerment Principles of the United Nations. Before joining Citi in 2009, Ms. Warson served as a Division Executive for US Trust, Bank of America Private Wealth Management where she built and ran the Western Region. Prior to joining US Trust, she was Executive Vice President and Regional Managing Director of Private Client Services at Wells Fargo Private Bank. In this role, she was responsible for Wells Fargo's investment management, trust, private banking, wealth planning and brokerage businesses in the Bay Area. Previously, Ms. Warson served as an Executive Vice President and Head of Sales and Distribution for Wells Fargo's trading and sales business. Ms. Warson earned her B.A. in Business Administration and French from the University of Minnesota. She also completed a fellowship at the Université de Tours in Tours, France.

Ms. Warson is an independent director of InterPrivate II Acquisition Corp., a blank check company. Ms. Warson also serves on the board of the non-profit Sky's the Limit, a global mentoring platform which serves the under resourced and underrepresented, and chairs the Bay Area Committee for CARE, the global humanitarian organization.

We believe Ms. Warson's experience in and knowledge of the financial services industry, her experience in the cannabis sector and the experience she has gained serving on other boards, make her qualified to serve as a member of our Board of Directors.



## **Interested Directors**

- *Michael W. Chorske.* Mr. Chorske is a senior investment and operating executive with a record of building entrepreneurial enterprises and managing alternatives funds and portfolios. From 2014 to 2019, Mr. Chorske was a founder and executive managing director of Emergent Holdings, LLC, an investor in and developer of aquaculture businesses. In this capacity, Mr. Chorske was a founder and co-president of Whole Oceans, LLC, which is developing a 20,000 metric ton, land-based aquaculture facility in Bucksport, ME to cultivate Atlantic salmon. In addition to his executive leadership roles, Mr. Chorske was appointed or acted as the chief financial and corporate development lead, and managed capital formation and stakeholder reporting, for each of the above companies. Mr. Chorske has served as a director of Healthy Business Group, LLC (a health and wellness service) since 2011, and as director of Riff, LLC (a sun-protective apparel company) since 2019. From 2005 to 2008, Mr. Chorske was a partner of GCM Capital LP, where he managed an investment fund pursuing a public and private structured convertible debt and private investment in public equity (“PIPE”) strategy. Mr. Chorske was also a Vice President of Finance of InterTrust Technologies Corp., where he managed corporate finance activities, and gained ten years of venture capital, growth equity and leveraged buyout (“LBO”) experience with Victory Capital/East River Ventures, where he invested across the capital structure in technology, healthcare services, biotechnology, consumer packaged goods (“CPG”) and natural resources. Mr. Chorske earned his MBA from Columbia University.

We believe Mr. Chorske’s management and investment experience, and the experience he has gained serving on other boards, make him qualified to serve as a member of our Board of Directors.

- *Scott Gordon.* Mr. Gordon has served as the Chairperson of our Board of Directors and our Chief Executive Officer since our inception. Mr. Gordon is the founder and Chief Executive Officer of Silver Spike Capital, an investment platform dedicated to the cannabis industry that includes our Adviser. Prior to founding Silver Spike Capital, Mr. Gordon had been the co-founder and chairman of Egg Rock Holdings, LLC (“Egg Rock”), the parent company of the Papa & Barkley family of cannabis products, with related subsidiary assets in manufacturing, processing, and logistics. Egg Rock also is the parent company of Papa & Barkley Essentials, a hemp-derived CBD business based in Colorado. From 2016 to 2018, Mr. Gordon was also President of Fintech Advisory Inc., the investment manager for a multi-billion dollar family office fund focused on long-term and opportunistic investments in emerging markets. From late 2013 to 2016, Mr. Gordon served as a Portfolio Manager at Taconic Capital Advisors, a multi-strategy investment firm. Prior to joining Taconic, Mr. Gordon was a Partner and Portfolio Manager at Caxton Associates from 2009 to 2012. He was also a Senior Managing Director and Head of Emerging Markets at Marathon Asset Management from 2007 to 2009. Earlier in his career, Mr. Gordon held leadership positions at Bank of America and ING Capital. Mr. Gordon was a founding member of the Emerging Markets business at JP Morgan where he worked upon graduating from Bowdoin College in 1983.

Mr. Gordon is Chairperson of the Board of Directors and Chief Executive Officer of Silver Spike Acquisition Corp. and Silver Spike Acquisition Corp. II, each a blank check company whose sponsor is an affiliate of our Adviser. On June 16, 2021, Silver Spike Acquisition Corp. consummated a business combination with WM Holding Company, LLC, which operates Weedmaps, a leading online listings marketplace for cannabis consumers and businesses, and WM Business, a comprehensive SaaS subscription offering sold to cannabis retailers and brands. In connection with the transaction, Silver Spike Acquisition Corp. changed its name to WM Technology, Inc.

We believe Mr. Gordon’s experience in emerging markets and in the cannabis sector make him qualified to serve as a member of our Board of Directors.

## **Executive Officer Who is Not a Director**

- *Gregory Gentile.* Mr. Gentile has served as our Chief Financial Officer, Chief Compliance Officer and Secretary since our inception. Mr. Gentile also serves as Partner, Chief Financial Officer and Chief Compliance Officer of our Adviser, and Chief Financial Officer of Silver Spike Acquisition Corp. II. From 2019 to June 2021, Mr. Gentile also served as Chief Financial Officer of Silver Spike Acquisition Corp. Prior to joining our Adviser, Mr. Gentile was Chief Executive Officer of GMG Investment Advisors, LLC, an investment management company, from 2010 to 2018. From 2008 to 2009, Mr. Gentile served as Managing Director of Barclays Capital, an investment bank. Prior to joining Barclays Capital, Mr. Gentile was a Managing Director at Lehman Brothers, where he was employed from 1997 until 2008. Mr. Gentile received a bachelor’s degree in management from the Massachusetts Institute of Technology, where he graduated in 1997.

## **Board of Directors Leadership Structure**

Our Board of Directors monitors and performs an oversight role with respect to our business and affairs, including with respect to investment practices and performance, compliance with regulatory requirements and the services, expenses and performance of service providers to us. Among other things, our Board of Directors approves the appointment of our Adviser and our officers, reviews and monitors the services and activities performed by our Adviser and our executive officers, and approves the engagement, and reviews the performance of, our independent registered public accounting firm.

Under our bylaws, our Board of Directors may designate a chairperson to preside over the meetings of the Board of Directors and meetings of the stockholders and to perform such other duties as may be assigned to him by the Board of Directors. We do not have a fixed policy as to whether the chairperson of the Board of Directors should be an independent director and believe that we should maintain the flexibility to select the chairperson and reorganize the leadership structure, from time to time, based on the criteria that is in our best interests and the best interests of our stockholders at such times.

Mr. Gordon serves as the Chairperson of our Board of Directors and he is also our Chief Executive Officer. We believe that Mr. Gordon’s history with our company, familiarity with its investment platform, and extensive knowledge of the financial services industry qualify him to serve as the Chairperson of our Board of Directors. We believe that we are best served through this existing leadership structure, as Mr. Gordon’s relationship with our Adviser provides an effective bridge and encourages an open dialogue between management and our Board of Directors, ensuring that these groups act with a common purpose.

Ms. Warson serves as the lead independent director of our Board of Directors. In his role as lead independent director, Ms. Warson, among other things: (i) presides over Board of Director meetings in the absence of the Chairperson of the Board of Directors; (ii) presides over executive sessions of the independent directors; (iii) along with the Chairperson of the Board of Directors, oversees the development of agendas for Board of Directors meetings; (iv) facilitates communication between the independent directors and management, and among the independent directors; (v) serves as a key point person for dealings between the independent directors and management; and (vi) has such other responsibilities as the Board of Directors or independent directors determine from time to time.

Our corporate governance practices include regular meetings of the independent directors in executive session without the presence of interested directors and management, the establishment of Audit, Nominating and Corporate Governance, and Compensation Committees comprised solely of independent directors and the appointment of a CCO, with whom the independent directors meet without the presence of interested directors and other members of management within executive session, for administering our compliance policies and procedures. While certain members of our Board of Directors may participate on the boards of directors of other public companies, we do not believe their participation will be excessive or interfere with their duties on our Board of Directors.

### **Board of Directors' Role in Risk Oversight**

Our Board of Directors performs its risk oversight function primarily through (i) its three committees, which report to the entire Board of Directors and are comprised solely of independent directors, and (ii) active monitoring of our CCO and our compliance policies and procedures.

As described below in more detail, the Audit Committee, the Nominating and Corporate Governance Committee and the Compensation Committee assist the Board of Directors in fulfilling its risk oversight responsibilities. The Audit Committee's risk oversight responsibilities include overseeing the company's accounting and financial reporting processes, the company's systems of internal controls regarding finance and accounting, and audits of the company's financial statements, as well as the establishment of guidelines and making recommendations to our Board of Directors regarding the valuation of our loans and investments. The Nominating and Corporate Governance Committee's risk oversight responsibilities include selecting, researching and nominating directors for election by our stockholders, planning for the succession of our executive officers, and overseeing the evaluation of the Board of Directors and our management. The Compensation Committee's risk oversight responsibilities include reviewing and approving the reimbursement by the Company of the compensation of the Company's CFO and CCO and their respective staffs (based on a percentage of time such individuals devote, on an estimated basis, to our business affairs).

Our Board of Directors also performs its risk oversight responsibilities with the assistance of our CCO. The Board of Directors annually reviews a written report from the CCO discussing the adequacy and effectiveness of the compliance policies and procedures of the company and its service providers. The CCO's annual report addresses at a minimum (i) the operation of the compliance policies and procedures of the company since the last report; (ii) any material changes to such policies and procedures since the last report; (iii) any recommendations for material changes to such policies and procedures as a result of the CCO's annual review; and (iv) any compliance matter that has occurred since the date of the last report about which the Board of Directors would reasonably need to know to oversee our compliance activities and risks. In addition, the CCO meets in executive session with the independent directors.

We believe that the role of our Board of Directors in risk oversight is effective and appropriate given the extensive regulation applicable to BDCs. As a BDC, we will be required to comply with certain regulatory requirements that control the levels of risk in our business and operations. For example, we are limited in our ability to enter into transactions with our affiliates, including investing in any portfolio company in which one of our affiliates currently has an investment.

## **Committees of the Board of Directors**

Our Board of Directors has established the committees described below. Our Code of Business Conduct and Ethics, our and our Adviser's Code of Ethics as required by the 1940 Act and our Board Committee charters are available at our corporate governance webpage at [ssic.silverspikecap.com](http://ssic.silverspikecap.com) and are also available to any stockholder who requests them by writing to our secretary, Gregory Gentile, at Silver Spike Investment Corp., 660 Madison Avenue, Suite 1600, New York, NY 10065, Attention: Corporate Secretary. Our directors are invited and encouraged to attend each Annual Meeting of Stockholders.

### ***Audit Committee***

The Audit Committee is responsible for selecting, engaging and discharging our independent accountants, reviewing the plans, scope and results of the audit engagement with our independent accountants, approving professional services provided by our independent accountants (including compensation therefore), reviewing the independence of our independent accountants and reviewing the adequacy of our internal control over financial reporting, as well as establishing guidelines and making recommendations to our Board of Directors regarding the valuation of our loans and investments. The members of the Audit Committee are Mr. Bohra, Mr. Da Corte and Ms. Warson, each of whom is not an interested person of us for purposes of the 1940 Act and is independent for purposes of the Nasdaq Stock Market corporate governance regulations. Mr. Da Corte serves as the Chairperson of the Audit Committee. Our Board of Directors has determined that Mr. Bohra is an "audit committee financial expert" as defined under SEC rules.

### ***Nominating and Corporate Governance Committee***

The Nominating and Corporate Governance Committee is responsible for determining criteria for service on the Board of Directors, identifying, researching and nominating directors for election by our stockholders, selecting nominees to fill vacancies on our Board of Directors or a committee of the Board of Directors, planning for the succession of our executive officers, overseeing the self-evaluation of the Board of Directors and its committees and evaluation of our management, and recommending to the Board of Directors the compensation to be paid to the independent directors. The Nominating and Corporate Governance Committee considers nominees properly recommended by our stockholders. The members of the Nominating and Corporate Governance Committee are Mr. Bohra, Mr. Da Corte and Ms. Warson, each of whom is not an interested person of us for purposes of the 1940 Act and is independent for purposes of the Nasdaq Stock Market corporate governance regulations. Ms. Warson serves as the Chairperson of the Nominating and Corporate Governance Committee.

The Nominating and Corporate Governance Committee will consider qualified director nominees recommended by stockholders when such recommendations are submitted in accordance with our bylaws and any other applicable law, rule or regulation regarding director nominations. Our bylaws require that the nomination must be delivered to our Corporate Secretary at our principal executive offices not earlier than the 150<sup>th</sup> day prior to the first anniversary of the date of our proxy statement for the preceding year's annual meeting, or later than the 120<sup>th</sup> day prior to the first anniversary of the date of our proxy statement for the preceding year's annual meeting. In connection with our first annual meeting, or if the date of the annual meeting has changed by more than 30 days from the first anniversary of the date of the preceding year's annual meeting, the nomination must be delivered not earlier than the 150<sup>th</sup> day prior to the date of such annual meeting, and not later than the 120<sup>th</sup> day prior to the date of such annual meeting or the tenth day following the day on which public announcement of the date of such meeting is first made.

In evaluating director nominees, the Nominating and Corporate Governance Committee considers, among others, the following factors:

- whether the individual possesses high standards of character and integrity, relevant experience, a willingness to ask hard questions and the ability to work well with others;
- whether the individual is free of conflicts of interest that would violate applicable law or regulation or interfere with the proper performance of the responsibilities of a director;

- whether the individual is willing and able to devote sufficient time to the affairs of the Company, and be diligent in fulfilling the responsibilities of a director and Board committee member;
- whether the individual has the capacity and desire to represent the balanced, best interests of the shareholders as a whole, and not a special interest group or constituency; and
- whether the individual possesses the skills, experiences (such as current business experience or other such current involvement in public service, academia or scientific communities), particular areas of expertise, particular backgrounds, and other characteristics that help ensure the effectiveness of the Board of Directors and Board committees.

The Nominating and Corporate Governance Committee's goal is to assemble a Board of Directors that brings us a variety of perspectives and skills derived from high-quality business and professional experience.

Other than the foregoing, there are no stated minimum criteria for director nominees, although the Nominating and Corporate Governance Committee may also consider such other factors as it may deem are in our best interests and those of our stockholders. The Nominating and Corporate Governance Committee also believes it appropriate for certain key members of our management to participate as members of the Board of Directors. The Nominating and Corporate Governance Committee does not assign specific weights to particular criteria and no particular criterion is necessarily applicable to all prospective nominees. We believe that the backgrounds and qualifications of the directors, considered as a group, should provide a significant composite mix of experience, knowledge and abilities that will allow the Board of Directors to fulfill its responsibilities. Our Board of Directors does not have a specific diversity policy, but considers diversity of race, religion, national origin, gender, sexual orientation, disability, cultural background and professional experiences in evaluating candidates for Board membership.

The Nominating and Corporate Governance Committee identifies nominees by first evaluating the current members of the Board of Directors willing to continue in service. Current members of the Board of Directors with skills and experience that are relevant to our business and who are willing to continue in service are considered for re-nomination, balancing the value of continuity of service by existing members of the Board of Directors with that of obtaining a new perspective. If any member of the Board of Directors does not wish to continue in service or if the Nominating and Corporate Governance Committee or the Board of Directors decides not to re-nominate a member for re-election, the Nominating and Corporate Governance Committee identifies the desired skills and experience of a new nominee in light of the criteria above. Current members of the Nominating and Corporate Governance Committee and Board of Directors are polled for suggestions as to individuals meeting the criteria of the Nominating and Corporate Governance Committee. Research may also be performed to identify qualified individuals. To date, we have not engaged third-parties to identify or evaluate or assist in identifying potential nominees to the Board of Directors, although we reserve the right in the future to retain a third-party search firm, if necessary.

#### ***Compensation Committee***

The Compensation Committee is responsible for reviewing and approving the reimbursement by us of the compensation of our CFO and CCO and their respective staffs (based on a percentage of time such individuals devote, on an estimated basis, to our business affairs). The current members of the Compensation Committee are Mr. Bohra, Mr. Da Corte and Ms. Warson, each of whom is not an interested person of us for purposes of the 1940 Act and is independent for purposes of the Nasdaq Stock Market corporate governance regulations. Ms. Warson serves as the Chairperson of the Compensation Committee. As discussed below, currently, none of our executive officers are directly compensated by us.

#### **Director Compensation**

We intend to pay our independent directors an annual retainer fee of \$25,000, payable once per year to independent directors that attended at least 75% of the meetings held the previous year. In addition, the independent directors will receive \$2,000 for each Board of Directors meeting in which the director attended in person and \$1,000 for each Board of Directors meeting in which the director participated other than in person, and reimbursement of reasonable out-of-pocket expenses incurred in connection with attending each Board of Directors meeting. The independent directors will also receive \$1,000 for each Board of Directors committee meeting in which they attended in person and \$500 for each Board of Directors committee meeting in which they participated other than in person, plus reimbursement of reasonable out-of-pocket expenses incurred in connection with attending each committee meeting not held concurrently with a Board of Directors meeting.

In addition, the Chairperson of the Audit Committee, the Nominating and Corporate Governance Committee and the Compensation Committee will each receive an annual retainer of \$3,500.

No compensation will be paid to directors who are interested persons of us as defined in the 1940 Act.

#### **Executive Officer Compensation**

None of our executive officers will receive direct compensation from us. The compensation of the principals and other investment professionals of our Adviser are paid by our Adviser. Compensation paid to our CFO and CCO and their respective staffs is set by our administrator, SSC, and is subject to reimbursement by us of an allocable portion of such compensation based on a percentage of time such individuals devote, on an estimated basis, to our business affairs.



## PORTFOLIO MANAGEMENT

The day-to-day management of our investment portfolio is primarily the responsibility of our Adviser and its Investment Committee, which currently consists of Scott Gordon, our Chief Executive Officer and our Adviser's Partner and Chief Executive Officer, Gregory Gentile, our Chief Financial Officer, Chief Compliance Officer and Secretary, and our Adviser's Partner, Chief Financial Officer and Chief Compliance Officer, William Healy, our Adviser's Partner and Head of Capital Formation, Frank Kotsen, CFA, our Adviser's Partner and Credit Portfolio Manager, Dino Colonna, CFA, our Adviser's Partner and Credit Portfolio Manager, and Umesh Mahajan, our Adviser's Credit Portfolio Manager.

### Investment Personnel

The members of our Adviser's Investment Committee will not be employed by us, and will receive no compensation from us in connection with their portfolio management activities. The Investment Committee members receive compensation that includes an annual base salary, an annual individual performance bonus, and a portion of the incentive fee or carried interest earned in connection with their services. Certain Investment Committee members, through their financial interests in the Adviser, are entitled to a portion of the profits earned by the Adviser, which includes any fees payable to the Adviser under the terms of the Investment Advisory Agreement, less expenses incurred by the Adviser in performing its services under the Investment Advisory Agreement.

Certain investments may be appropriate for us and affiliates of our Adviser, and the members of our Adviser's Investment Committee could face conflicts of interest in the allocation of investment opportunities between such entities. See "Certain Relationships And Related Party Transactions."

Below are the biographies for the Investment Committee members whose biographies are not included elsewhere in this prospectus. For more information regarding the business experience of Messrs. Gordon and Gentile, see "Management — Biographical Information."

- *Dino Colonna, CFA.* Mr. Colonna, our Adviser's Partner and Credit Portfolio Manager, will be primarily responsible for the day-to-day management of our investment portfolio. Since 2001, Mr. Colonna has managed traditional and alternative investment portfolios, and advised corporations and institutional investors across the global capital markets. Prior to joining the Adviser, Mr. Colonna was managing partner at Madison Capital Advisors, a middle-market asset-backed lending and advisory firm focused on emerging growth companies in the cannabis, life sciences and tech sectors. Prior to Madison Capital Advisors, Mr. Colonna spent four years as an investment banker at the top-ranked Equity Capital Markets team at Barclays in London, and six years as a senior research analyst at Forest Investment Management, a global multi-strategy hedge fund. With Barclays, he advised on and structured over \$8 billion of equity, derivative and debt transactions, and while at Forest Investment Management, he specialized in credit and equity research, and was part of the portfolio management team managing an over \$500 million multi-strategy portfolio. Mr. Colonna holds a CFA Charter, a B.S.B.A. from the University of Delaware and an international M.B.A. from ESADE Business School (Spain).
- *William Healy.* Mr. Healy, our Adviser's Partner and Head of Capital Formation, will be primarily responsible for the day-to-day management of our investment portfolio. Since 1986, Mr. Healy has advised and covered institutional clients in a variety of roles spanning corporate finance, investment management, and investment banking in London, Brazil, and New York. Prior to joining the Adviser, he was President of Pantera Capital Management, a blockchain venture capital manager, from 2018 to May 2019. From 1998 to 2016, Mr. Healy managed several hedge fund and private equity dedicated institutional sales teams at Deutsche Bank and the firm's wealth and asset management division. He began his career with The Chase Manhattan Bank based in London, Brazil, and New York where he advised multinational corporations on cross-border funding of their Latin America-domiciled operations. From 1993 to 1998, he formed and managed the ING Barings emerging markets institutional debt sales team where he covered clients and often traveled to Latin America, Europe, and Asia to structure, price, and pre-market many of the firm's capital markets transactions. Mr. Healy received a BA, International Business from The George Washington University, Washington DC. He is multi-lingual (English, Spanish, and Portuguese) and a Chartered Alternative Investment Analyst Association (CAIA) member. Mr. Healy also serves as a member of the board of directors and president of Silver Spike Acquisition Corp. II and, from 2019 to June 2021, served as a member of the board of directors and president of Silver Spike Acquisition Corp.

- *Frank Kotsen, CFA.* Mr. Kotsen, our Adviser’s Partner and Credit Portfolio Manager, will be primarily responsible for the day-to-day management of our investment portfolio. Prior to joining the Adviser, Mr. Kotsen spent nearly 24 years at Merrill Lynch and Bank of America Securities in various roles in credit trading and management. Most recently, Mr. Kotsen ran Global Credit and Special Situations at Bank of America Securities, the largest global sell-side credit trading business, from 2014 to January 2020, where he, in addition to other initiatives, helped build a multi-billion dollar credit asset lending business. Prior to his work on Wall Street and earning an MBA, Mr. Kotsen worked as a senior consultant in Oracle Corporation’s Consulting Group, providing large-scale technology solutions to various industries with a focus on the pharmaceutical industry. Prior to his role at Oracle, Mr. Kotsen worked as a management consulting analyst where he provided strategic analysis and advice to several Fortune 100 corporations. Mr. Kotsen earned an undergraduate Bachelor of Science in Engineering in Civil Engineering and Operations Research from Princeton University, and earned an MBA from The Wharton School of the University of Pennsylvania where he graduated as a Palmer Scholar.
- *Umesh Mahajan.* Mr. Mahajan, our Adviser’s Credit Portfolio Manager, will be primarily responsible for the day-to-day management of our investment portfolio. Prior to joining the Adviser, Mr. Mahajan was a Managing Director for four years at Ascribe Capital, a credit fund focused on value investing in middle market companies. From September 2003 to August 2016, Mr. Mahajan worked at Merrill Lynch and Bank of America in various roles in their Global Markets and Investment Banking divisions in New York. He specialized in credit and special situation investing as a Managing Director in the Global Credit and Special Situations group at Bank of America Securities and as a Vice President in the Principal Credit Group at Merrill Lynch. Mr. Mahajan also worked in Merrill Lynch’s energy and power investment banking group for two years. From 1994 to 2001, Mr. Mahajan worked in J.P. Morgan’s investment banking team in Asia. Mr. Mahajan holds a Bachelor of Technology in Electrical Engineering from the Indian Institute of Technology, Bombay and an MBA from The Wharton School of the University of Pennsylvania where he graduated as a Palmer Scholar. Mr. Mahajan also holds a Certificate in ESG Investing from the CFA Institute.

The table below shows the dollar range of shares of common stock that will be beneficially owned by each of the members of our Adviser’s Investment Committee immediately after this offering.

<b>Name of Investment Committee Member</b>	<b>Dollar Range of Equity Securities in Silver Spike Investment Corp.(1)(2)(3)</b>
Dino Colonna, CFA	\$10,000-\$50,000
Gregory Gentile	\$50,001-\$100,000
Scott Gordon	Over \$1,000,000(4)
William Healy	\$50,001-\$100,000
Frank Kotsen, CFA	\$500,001-\$1,000,000
Umesh Mahajan	None

(1) Beneficial ownership has been determined in accordance with Rule 16a-1(a)(2) of the Exchange Act.

(2) The dollar range of equity securities beneficially owned is based on a stock price of \$14.00 per share.

(3) The dollar range of equity securities beneficially owned are: none, \$1-\$10,000, \$10,001-\$50,000, \$50,001-\$100,000, \$100,001-\$500,000, \$500,001-\$1,000,000, or over \$1,000,000.

(4) Includes shares held by our Adviser. Mr. Gordon may be deemed to beneficially own the shares held by our Adviser by virtue of his indirect control of our Adviser. Mr. Gordon disclaims beneficial ownership of the shares held by our Adviser except to the extent of his pecuniary interest in the shares.

## INVESTMENT ADVISORY AGREEMENT

### Overview of Our Investment Adviser

#### *Management Services*

Silver Spike Capital, LLC will manage the company and oversee all of its operations. SSC is registered as an investment adviser under the Advisers Act. Our Adviser serves pursuant to the Investment Advisory Agreement in accordance with the Advisers Act. Subject to the overall supervision of our Board of Directors, our Adviser manages our day-to-day operations and provides us with investment advisory services. Under the terms of the Investment Advisory Agreement, our Adviser will:

- determine the composition of our portfolio, the nature and timing of the changes to our portfolio and the manner of implementing such changes;
- determine what securities and other assets we purchase, retain or sell;
- identify, evaluate and negotiate the structure of the investments we make;
- execute, monitor and service the investments we make;
- perform due diligence on prospective portfolio companies; and
- provide us with such other investment advisory, research and related services as we may, from time to time, reasonably require for the investment of our funds, including providing operating and managerial assistance to us and our portfolio companies as required.

From time to time, the Adviser may pay amounts owed by us to third-party providers of goods or services, including the Board of Directors, and we will subsequently reimburse the Adviser for such amounts paid on its behalf. Amounts payable to the Adviser are settled in the normal course of business without formal payment terms.

Our Adviser's services under the Investment Advisory Agreement are not exclusive and it is free to furnish similar services to other entities so long as its services to us are not impaired.

#### *Management Fee*

We will pay our Adviser a fee for its services under the Investment Advisory Agreement consisting of two components: a base management fee and an incentive fee. The cost of both the base management fee payable to our Adviser and any incentive fees payable to our Adviser will ultimately be borne by our common stockholders.

#### *Base Management Fee*

The base management fee is calculated at an annual rate of 1.75% of our gross assets (i.e., total assets held before deduction of any liabilities), which includes any investments acquired with the use of leverage and excludes any cash and cash equivalents (as defined in the notes to our financial statements). The fair value of derivatives and swaps, which will not necessarily equal the notional value of such derivatives and swaps, will be included in our calculation of gross assets. The base management fee is calculated based on the average value of our gross assets at the end of the two most recently completed quarters. For example, the average value of our gross assets used for calculating the third quarter base management fee will be equal to our gross assets at the end of the second quarter plus our gross assets at the end of the third quarter, divided by two. The base management fee for any partial month or quarter, as the case may be, will be appropriately prorated and adjusted for any share issuances or repurchases during the relevant month or quarter, as the case may be.

## Incentive Fee

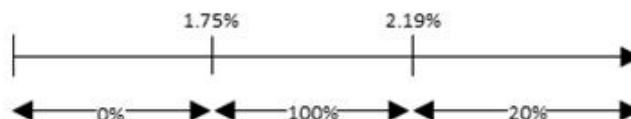
The incentive fee has two parts. The first part of the incentive fee, the Incentive Fee on Income, is calculated and payable quarterly in arrears based on our “Pre-Incentive Fee Net Investment Income” for the immediately preceding quarter. For this purpose, “Pre-Incentive Fee Net Investment Income” means interest income, dividend income and any other income (including (i) any other fees (other than fees for providing managerial assistance), such as commitment, origination, structuring, advisory, diligence and consulting fees or other fees that we receive from portfolio companies, (ii) any gain realized on the extinguishment of our own debt and (iii) any other income of any kind that we are required to distribute to our stockholders in order to maintain our RIC status) accrued during the quarter, minus our operating expenses for the quarter (including the base management fee, expenses payable under the Administration Agreement with SSC, and any interest expense and dividends paid on any issued and outstanding preferred stock, but excluding the incentive fee). Pre-Incentive Fee Net Investment Income includes, in the case of investments with a deferred interest feature (such as OID, debt instruments with PIK interest and zero coupon securities), accrued income that we have not yet received and may never receive in cash. Pre-Incentive Fee Net Investment Income does not include any realized capital gains, realized capital losses or unrealized capital appreciation or depreciation. Pre-Incentive Fee Net Investment Income, expressed as a rate of return on the value of our net assets at the end of the immediately preceding quarter, will be compared to a “hurdle rate” of 1.75% per quarter (7% annualized), subject to a “catch-up” provision measured as of the end of each quarter. Our net investment income used to calculate the Incentive Fee on Income is also included in the amount of our gross assets used to calculate the 1.75% base management fee. The operation of the Incentive Fee on Income with respect to our Pre-Incentive Fee Net Investment Income for each quarter is as follows:

- No Incentive Fee on Income is payable to the Adviser in any quarter in which our Pre-Incentive Fee Net Investment Income does not exceed the “hurdle rate” of 1.75%;
- 100% of our Pre-Incentive Fee Net Investment Income, if any, that exceeds the “hurdle rate,” but is less than or equal to 2.19% in any quarter (8.76% annualized), will be payable to the Adviser. We refer to this portion of our Incentive Fee on Income as the catch up. It is intended to provide an Incentive Fee on Income of 20% on all of our Pre-Incentive Fee Net Investment Income when our Pre-Incentive Fee Net Investment Income exceeds 2.19% in any quarter;
- For any quarter in which our Pre-Incentive Fee Net Investment Income exceeds 2.19%, the Incentive Fee on Income shall equal 20% of the amount of our Pre-Incentive Fee Net Investment Income, because the preferred return and catch up will have been achieved; and
- For purposes of computing the Incentive Fee on Income, the calculation methodology will look through derivatives or swaps as if we owned the reference assets directly. Therefore, net interest income, if any, associated with a derivative or swap (which is defined as the difference between (i) the interest income and transaction fees received in respect of the reference assets of the derivative or swap and (ii) all interest and other expenses paid by us to the derivative or swap counterparty) will be included in the calculation of Pre-Incentive Fee Net Investment Income for purposes of the Incentive Fee on Income.

The following is a graphical representation of the calculation of the Incentive Fee on Income:

### Quarterly Incentive Fee on Income Based on Pre-Incentive Fee Net Investment Income

(expressed as a percentage of the value of net assets)



## Percentage of Pre-Incentive Fee Net Investment Income Allocated to SSC

The second part of the incentive fee, the Incentive Fee on Capital Gains, payable at the end of each fiscal year (or upon termination of the Investment Advisory Agreement) in arrears, equals 20% of cumulative realized capital gains from inception to the end of each fiscal year, less cumulative realized capital losses and unrealized capital depreciation from inception to the end of each fiscal year, less the aggregate amount of any previously paid Incentive Fees on Capital Gains for prior periods. In no event will the Incentive Fee on Capital Gains payable pursuant to the Investment Advisory Agreement be in excess of the amount permitted by the Advisers Act, including Section 205 thereof. The Incentive Fee on Capital Gains determined at the end of our first fiscal year will be calculated for a period shorter than 12 months to take into account any realized capital gains computed net of all realized capital losses and unrealized capital depreciation from inception.

For purposes of computing the Incentive Fee on Capital Gains, the calculation methodology will look through derivatives or swaps as if we owned the reference assets directly. Therefore, realized gains and realized losses on the disposition of any reference assets, as well as unrealized depreciation on reference assets retained in the derivative or swap, will be included on a cumulative basis in the calculation of the Incentive Fee on Capital Gains.

While the Investment Advisory Agreement neither includes nor contemplates the inclusion of unrealized gains in the calculation of the Incentive Fee on Capital Gains, as required by U.S. GAAP, we accrue Incentive Fees on Capital Gains on unrealized gains. This accrual reflects the Incentive Fees on Capital Gains that would be payable to the Adviser if our entire investment portfolio was liquidated at its fair value as of the balance sheet date even though the Adviser is not entitled to an Incentive Fee on Capital Gains with respect to unrealized gains unless and until such gains are actually realized.

For our first year of operations following consummation of this offering, the Adviser has irrevocably agreed to waive the Incentive Fee on Income and the Incentive Fee on Capital Gains, without recourse against or reimbursement by the Company. The waiver of the Incentive Fee on Capital Gains applies only to realized capital gains on assets sold during our first year of operations.

### Example 1: Incentive Fee on Income for Each Quarter

#### Scenario 1

##### Assumptions

Investment income (including interest, dividends, fees, etc.) = 1.25%

Hurdle rate(1) = 1.75%

Management fee(2) = 0.4375%

Other expenses (legal, accounting, custodian, transfer agent, etc.) = 0.2%

Pre-Incentive Fee Net Investment Income

(investment income – (management fee + other expenses)) = 0.6125%

Pre-Incentive Fee Net Investment Income does not exceed hurdle rate; therefore, there is no Incentive Fee on Income.

#### Scenario 2

##### Assumptions

Investment income (including interest, dividends, fees, etc.) = 2.65%

Hurdle rate(1) = 1.75%

Management fee(2) = 0.4375%

Other expenses (legal, accounting, custodian, transfer agent, etc.) = 0.2%

Pre-Incentive Fee Net Investment Income

(investment income – (management fee + other expenses)) = 2.0125%

Incentive Fee on Income = 100% × Pre-Incentive Fee Net Investment Income (subject to hurdle rate and “catch up”)(3)

= 100% × (2.0125% – 1.75%)

= 0.2625%

Pre-Incentive Fee Net Investment Income exceeds the hurdle rate, but does not fully satisfy the “catch-up” provision; therefore, the Incentive Fee on Income is 0.2625%.

### **Scenario 3**

#### *Assumptions*

Investment income (including interest, dividends, fees, etc.) = 3.25%

Hurdle rate(1) = 1.75%

Management fee(2) = 0.4375%

Other expenses (legal, accounting, custodian, transfer agent, etc.) = 0.2%

Pre-Incentive Fee Net Investment Income

(investment income – (management fee + other expenses)) = 2.6125%

Incentive Fee on Income = 100% × Pre-Incentive Fee Net Investment Income (subject to hurdle rate and “catch- up”)(3)

Incentive Fee on Income = 100% × “catch-up” + (20% × (Pre-Incentive Fee Net Investment Income – 2.19%))

Catch-up = 2.19% – 1.75%

= 0.44%

Incentive Fee on Income = (100% × 0.44%) + (20% × (2.6125% – 2.19%))

= 0.44% + (20% × 0.4225%)

= 0.44% + 0.0845%

= 0.5245%

Pre-Incentive Fee Net Investment Income exceeds the hurdle rate, and fully satisfies the “catch-up” provision; therefore, the Incentive Fee on Income is 0.5245%.

(1) Represents 7% annualized hurdle rate.

(2) Represents 1.75% annualized base management fee.

(3) The “catch-up” provision is intended to provide our Adviser with an Incentive Fee on Income of 20% on all Pre-Incentive Fee Net Investment Income as if a hurdle rate did not apply when our Pre-Incentive Fee Net Investment Income exceeds 2.19% in any quarter.

**Example 2: Incentive Fee on Capital Gains(\*):**

**Scenario 1**

*Assumptions*

Year 1: \$20 million investment made in Company A (“Investment A”) and \$30 million investment made in Company B (“Investment B”)

Year 2: Investment A sold for \$50 million and fair market value (“FMV”) of Investment B determined to be \$32 million

Year 3: FMV of Investment B determined to be \$25 million

Year 4: Investment B sold for \$31 million

The Incentive Fee on Capital Gains would be:

Year 1: None

Year 2: Incentive Fee on Capital Gains of \$6 million — (\$30 million realized capital gains on sale of Investment A multiplied by 20%)

Year 3: None — \$5 million (20% multiplied by (\$30 million cumulative capital gains less \$5 million cumulative capital depreciation)) less \$6 million (Incentive Fee on Capital Gains paid in Year 2)

Year 4: Incentive Fee on Capital Gains of \$200,000 — \$6.2 million (\$31 million cumulative realized capital gains multiplied by 20%) less \$6 million (Incentive Fee on Capital Gains paid in Year 2)

**Scenario 2**

*Assumptions*

Year 1: \$20 million investment made in Company A (“Investment A”), \$30 million investment made in Company B (“Investment B”) and \$25 million investment made in Company C (“Investment C”)

Year 2: Investment A sold for \$50 million, FMV of Investment B determined to be \$25 million and FMV of Investment C determined to be \$25 million

Year 3: FMV of Investment B determined to be \$27 million and Investment C sold for \$30 million

Year 4: FMV of Investment B determined to be \$24 million

Year 5: Investment B sold for \$20 million

The Incentive Fee on Capital Gains, if any, would be:

Year 1: None

Year 2: \$5 million Incentive Fee on Capital Gains — 20% multiplied by \$25 million (\$30 million realized capital gains on Investment A less \$5 million unrealized capital depreciation on Investment B)

Year 3: \$1.4 million Incentive Fee on Capital Gains(1) — \$6.4 million (20% multiplied by \$32 million (\$35 million cumulative realized capital gains less \$3 million unrealized capital depreciation on Investment B)) less \$5 million (Incentive Fee on Capital Gains paid in Year 2)

Year 4: None

Year 5: None — \$5 million (20% multiplied by \$25 million (cumulative realized capital gains of \$35 million less realized capital losses of \$10 million)) less \$6.4 million (cumulative Incentive Fees on Capital Gains paid in Year 2 and Year 3)(2)

\* The hypothetical amounts of returns shown are based on a percentage of our total net assets and assume no leverage. There is no guarantee that positive returns will be realized and actual returns may vary from those shown in this example.

- (1) As illustrated in Year 3 of Scenario 2 above, if we were to be wound up on a date other than our fiscal year end of any year, we may have paid aggregate Incentive Fees on Capital Gains that are more than the amount of such fees that would be payable if we had been wound up on our fiscal year end of such year.
- (2) As noted above, it is possible that the cumulative aggregate Incentive Fees on Capital Gains received by our Adviser (\$6.4 million) is effectively greater than \$5 million (20% of cumulative aggregate realized capital gains less net realized capital losses or net unrealized depreciation (\$25 million)).

### **Payment of Our Expenses**

Our primary operating expenses are the payment of a base management fee and any incentive fees under the Investment Advisory Agreement and the allocable portion of overhead and other expenses incurred by SSC in performing its obligations under the Administration Agreement. Our investment management fee compensates our Adviser for its work in identifying, evaluating, negotiating, executing, monitoring, servicing and realizing our investments.

Except as specifically provided below, all investment professionals and staff of the Adviser, when and to the extent engaged in providing investment advisory and management services to us, the base compensation, bonus and benefits, and the routine overhead expenses of such personnel allocable to such services, are provided and paid for by the Adviser. We bear our allocable portion of the compensation paid by the Adviser (or its affiliates) to our CFO and CCO and their respective staffs (based on a percentage of time such individuals devote, on an estimated basis, to our business affairs). We bear all other expenses of our operations and transactions, including (without limitation) fees and expenses relating to:

- the cost of our organization and offerings;
- the cost of calculating our NAV, including the cost of any third-party valuation services;
- the cost of effecting sales and repurchases of shares of our common stock and other securities;
- fees and expenses payable under any underwriting agreements, if any;
- debt service and other costs of borrowings or other financing arrangements;
- costs of hedging;
- expenses, including travel expenses, incurred by the Adviser, or members of the investment team, or payable to third-parties, performing due diligence on prospective portfolio companies and, if necessary, enforcing our rights;
- management and incentive fees payable pursuant to the Investment Advisory Agreement;
- fees payable to third-parties relating to, or associated with, making investments and valuing investments (including third-party valuation firms);
- costs, including legal fees, associated with compliance under cannabis laws;
- transfer agent and custodial fees;



- fees and expenses associated with marketing efforts (including attendance at industry and investor conferences and similar events);
- federal and state registration fees;
- any exchange listing fees and fees payable to rating agencies;
- federal, state and local taxes;
- independent directors' fees and expenses, including travel expenses;
- cost of preparing financial statements and maintaining books and records and filing reports or other documents with the SEC (or other regulatory bodies) and other reporting and compliance costs, and the compensation of professionals responsible for the preparation of the foregoing;
- the cost of any reports, proxy statements or other notices to our stockholders (including printing and mailing costs), the costs of any stockholder or director meetings and the compensation of investor relations personnel responsible for the preparation of the foregoing and related matters;
- brokerage commissions and other compensation payable to brokers or dealers;
- research and market data;
- fidelity bond, directors' and officers' errors and omissions liability insurance and other insurance premiums;
- direct costs and expenses of administration, including printing, mailing and staff;
- fees and expenses associated with independent audits, and outside legal and consulting costs;
- costs of winding up;
- costs incurred in connection with the formation or maintenance of entities or vehicles to hold our assets for tax or other purposes;
- extraordinary expenses (such as litigation or indemnification); and
- costs associated with reporting and compliance obligations under the 1940 Act and applicable federal and state securities laws.

#### **Duration and Termination**

The Investment Advisory Agreement was first approved by our Board of Directors on July 7, 2021. Unless earlier terminated as described below, the Investment Advisory Agreement will remain in effect for two years from its initial approval, and from year-to-year thereafter, if approved annually by the Board of Directors or by the affirmative vote of the holders of a majority of our outstanding voting securities, including, in either case, approval by a majority of our directors who are not interested persons.

The Investment Advisory Agreement will automatically terminate in the event of its assignment. In accordance with the 1940 Act, without payment of any penalty, we may terminate the Investment Advisory Agreement with the Adviser upon 60 days' written notice. The decision to terminate the Investment Advisory Agreement may be made by a majority of the Board of Directors or the stockholders holding a majority (as defined under the 1940 Act) of the outstanding shares of our common stock. In addition, without payment of any penalty, the Adviser may generally terminate the Investment Advisory Agreement upon 60 days' written notice.

**Indemnification**

The Investment Advisory Agreement provides that, absent willful misfeasance, bad faith or gross negligence in the performance of their respective duties or by reason of the reckless disregard of their respective duties and obligations, our Adviser and its officers, managers, partners, members (and their members, including the owners of their members), agents, employees, controlling persons and any other person or entity affiliated with it, are entitled to indemnification from us for any damages, liabilities, costs and expenses (including reasonable attorneys' fees and amounts reasonably paid in settlement) arising from the rendering of our Adviser's services under the Investment Advisory Agreement or otherwise as our investment adviser.

**Organization of Our Investment Adviser**

Our Adviser is a Delaware limited liability company that registered as an investment adviser under the Advisers Act. The principal address of our Adviser is 660 Madison Avenue, Suite 1600, New York, NY 10065.

**Board of Directors' Approval of the Investment Advisory Agreement**

A discussion regarding the basis for our Board of Directors' approval of our Investment Advisory Agreement will be included in our first annual report on Form 10-K filed subsequent to any such Board of Directors' approval, or incorporated by reference therein.

## ADMINISTRATION AGREEMENT

We have entered into an Administration Agreement with SSC, under which SSC will provide administrative services for us, including office facilities and equipment and clerical, bookkeeping and record-keeping services at such facilities. Under the Administration Agreement, SSC also will perform, or oversee the performance of, our required administrative services, which includes being responsible for the financial records which we are required to maintain and preparing reports to our stockholders and reports filed with the SEC. In addition, SSC will assist us in determining and publishing our NAV, overseeing the preparation and filing of our tax returns and the printing and dissemination of reports to our stockholders, and generally overseeing the payment of our expenses and the performance of administrative and professional services rendered to us by others. In addition, pursuant to the terms of the Administration Agreement, SSC may delegate its obligations under the Administration Agreement to an affiliate or to a third-party and we will reimburse SSC for any services performed for it by such affiliate or third-party.

For providing these services, facilities and personnel, we will reimburse SSC the allocable portion of overhead and other expenses incurred by SSC in performing its obligations under the Administration Agreement, including our allocable portion of the costs of compensation and related expenses of our CFO and CCO and their respective staffs (based on the percentage of time those individuals devote, on an estimated basis, to our business and affairs). The Administration Agreement also provides that we shall reimburse SSC for certain organization costs incurred prior to the commencement of our operations, and for certain offering costs. Such reimbursement is at cost, with no profit to, or markup by, SSC. Our allocable portion of SSC's costs will be determined based upon costs attributable to our operations versus costs attributable to the operations of other entities for which SSC provides administrative services. SSC may also provide on our behalf managerial assistance to our portfolio companies.

The Administration Agreement provides that, absent willful misfeasance, bad faith or gross negligence in the performance of their respective duties or by reason of the reckless disregard of their respective duties and obligations, SSC and its officers, managers, partners, members (and their members, including the owners of their members), agents, employees, controlling persons and any other person or entity affiliated with it are entitled to indemnification from us for any damages, liabilities, costs and expenses (including reasonable attorneys' fees and amounts reasonably paid in settlement) arising from the rendering of services under the Administration Agreement or otherwise as our administrator.

Unless earlier terminated as described below, the Administration Agreement will remain in effect for two years from its initial approval, and from year-to-year thereafter, if approved annually by the Board of Directors or by the affirmative vote of the holders of a majority of our outstanding voting securities, including, in either case, approval by a majority of our directors who are not interested persons. The Administration Agreement may be terminated at any time, without the payment of any penalty, on 60 days' written notice, by the vote of a majority of our outstanding voting securities, or by the vote of the Board of Directors, or by SSC.

In accordance with the Administration Agreement, and with the approval of the Board of Directors, the Company and SSC have entered into a services agreement with SS&C as sub-administrator (the "Services Agreement"). Under the Services Agreement, SS&C has assumed responsibility for performing certain administrative services for us.

## LICENSE AGREEMENT

We have also entered into a license agreement with SSC pursuant to which SSC has agreed to grant us a nonexclusive, royalty-free license to use the name “Silver Spike.” Under this agreement, we will have a right to use the “Silver Spike” name, for so long as SSC or one of its affiliates remains our investment adviser. Other than with respect to this limited license, we will have no legal right to the “Silver Spike” name.

## CERTAIN RELATIONSHIPS AND RELATED PARTY TRANSACTIONS

We have entered into an Investment Advisory Agreement with SSC, our Adviser. SSC is controlled by Scott Gordon, its Partner and Chief Executive Officer, and the Chairperson of our Board of Directors and our Chief Executive Officer. In addition, Gregory Gentile, our Chief Financial Officer, Chief Compliance Officer and Secretary, and each of the other members of our Adviser's Investment Committee, are partners of our Adviser. Pursuant to the Investment Advisory Agreement, fees payable to our Adviser will be equal to (a) a base management fee of 1.75% of the value of our gross assets (i.e., total assets held before deduction of any liabilities), which includes investments acquired with the use of leverage and excludes cash and cash equivalents and (b) an incentive fee based on our performance. The incentive fee consists of two parts. The first part of the incentive fee, the Incentive Fee on Income, is calculated and payable quarterly in arrears and equals 20% of our "Pre-Incentive Fee Net Investment Income" for the quarter, subject to a preferred return, or "hurdle," and a "catch-up" feature. The second part of the incentive fee, the Incentive Fee on Capital Gains, is determined and payable in arrears as of the end of each fiscal year (or upon termination of the Investment Advisory Agreement) and equals 20% of our realized capital gains on a cumulative basis from inception through the end of the fiscal year, if any, computed net of all realized capital losses and unrealized capital depreciation on a cumulative basis, less the aggregate amount of any previously paid Incentive Fees on Capital Gains. For our first year of operations following consummation of this offering, the Adviser has irrevocably agreed to waive the Incentive Fee on Income and the Incentive Fee on Capital Gains, without recourse against or reimbursement by the Company. The waiver of the Incentive Fee on Capital Gains applies only to realized capital gains on assets sold during our first year of operations. See "Investment Advisory Agreement."

We have also entered into an Administration Agreement with SSC, under which SSC will provide administrative services for us, including office facilities and equipment and clerical, bookkeeping and record-keeping services at such facilities. Under the Administration Agreement, SSC also will perform, or oversee the performance of, our required administrative services, which includes being responsible for the financial records which we are required to maintain and preparing reports to our stockholders and reports filed with the SEC. In addition, SSC will assist us in determining and publishing our NAV, overseeing the preparation and filing of our tax returns and the printing and dissemination of reports to our stockholders, and generally overseeing the payment of our expenses and the performance of administrative and professional services rendered to us by others. For providing these services, facilities and personnel, we will reimburse SSC the allocable portion of overhead and other expenses incurred by SSC in performing its obligations under the Administration Agreement, including rent and our allocable portion of the costs of compensation and related expenses of our CFO and CCO and their respective staffs (based on a percentage of time such individuals devote, on an estimated basis, to our business affairs). Such reimbursement is at cost, with no profit to, or markup by, SSC. Our allocable portion of SSC's costs will be determined based upon costs attributable to our operations versus costs attributable to the operations of other entities for which SSC provides administrative services. The Administration Agreement also provides that we shall reimburse SSC for certain organization costs incurred prior to the commencement of our operations, and for certain offering costs. SSC may also provide on our behalf managerial assistance to our portfolio companies. The administration agreement may be terminated by either party without penalty upon 60 days' written notice to the other party. SSC may also provide on our behalf managerial assistance to our portfolio companies.

We have also entered into a license agreement with SSC pursuant to which SSC has agreed to grant us a nonexclusive, royalty-free license to use the name "Silver Spike." Under this agreement, we will have a right to use the "Silver Spike" name for so long as SSC or one of its affiliates remains our investment adviser. Other than with respect to this limited license, we will have no legal right to the "Silver Spike" name.

Our executive officers and directors, and certain members of our Adviser, serve or may serve as officers, directors or principals of entities that may operate in the same or a related line of business as us or as investment funds managed by our affiliates. For example, SSC presently serves as a manager to several special purpose acquisition companies, or SPACs. These investment vehicles under management were formed for the purpose of investing in specific private equity transactions, which differ from our mandate. SSC and its affiliates also manage private investment funds, and may manage other funds in the future, that have investment mandates that are similar, in whole or in part, to ours. Accordingly, they may have obligations to investors in those entities, the fulfillment of which might not be in the best interests of us or our stockholders. For example, the principals of our Adviser may face conflicts of interest in the allocation of investment opportunities to us and such other funds. The fact that our investment advisory fees are lower than those of certain other funds could amplify this conflict of interest.

To the extent an investment opportunity is appropriate for us or any other investment fund managed by our affiliates, and co-investment is not possible, SSC will adhere to its investment allocation policy in order to determine to which entity to allocate the opportunity. Any such opportunity will be allocated first to the entity whose

investment strategy is the most consistent with the opportunity being allocated, and second, if the terms of the opportunity are consistent with more than one entity's investment strategy, on an alternating basis. Although our investment professionals will endeavor to allocate investment opportunities in a fair and equitable manner, we and our common stockholders could be adversely affected to the extent investment opportunities are allocated among us and other investment vehicles managed or sponsored by, or affiliated with, our executive officers, directors and members of our Adviser.

The 1940 Act prohibits us from making certain negotiated co-investments with affiliates, unless we receive an order from the SEC permitting us to do so. SSC and certain of its affiliates expect to submit an exemptive application to the SEC to permit us to co-invest with other funds managed by SSC or its affiliates in a manner consistent with our investment objective, positions, policies, strategies and restrictions, as well as regulatory requirements and other pertinent factors. There can be no assurance that any such exemptive order will be submitted or obtained. Prior to receiving any such exemptive order from the SEC, SSC will offer us the right to participate in all investment opportunities that it determines are appropriate for us in view of our investment objective, policies and strategies and other relevant factors. These offers will be subject to the exception that, in accordance with SSC's investment allocation policy, we might not participate in each individual opportunity, but will, on an overall basis, be entitled to participate equitably with other entities managed by SSC and its affiliates.

SSC's policies are also designed to manage and mitigate the conflicts of interest associated with the allocation of investment opportunities if we are able to co-invest, either pursuant to SEC interpretive positions or an exemptive order, with other accounts managed by our Adviser and its affiliates. Generally, under the investment allocation policy, a portion of each opportunity that is appropriate for us and any affiliated fund, which may vary based on asset class and liquidity, among other factors, will be offered to us and such other eligible accounts, as determined by SSC. The investment allocation policy further provides that allocations among us and other eligible accounts will generally be made in accordance with SEC interpretive positions or an exemptive order. SSC seeks to treat all clients fairly and equitably in a manner consistent with its fiduciary duty to each of them; however, in some instances, especially in instances of limited liquidity, the factors may not result in pro rata allocations or may result in situations where certain accounts receive allocations where others do not.

We have adopted a formal code of ethics that governs the conduct of our officers and directors. Our officers and directors also remain subject to the duties imposed by both the 1940 Act and the Maryland General Corporation Law.

## CONTROL PERSONS AND PRINCIPAL STOCKHOLDERS

Immediately prior to the completion of this offering, there will be 386 shares of common stock outstanding and one stockholder of record. At that time, we will have no other shares of capital stock outstanding. The following table sets out certain ownership information with respect to our common stock for those persons who directly or indirectly own, control or hold with the power to vote 5% or more of our outstanding common stock and all officers and directors as a group. Shareholders who own 25% or more of the Company's shares may have a significant impact on any shareholder vote of the Company. The address of each individual and entity included below is 660 Madison Avenue, Suite 1600, New York, NY 10065.

Name	Type of Ownership	Immediately Prior to This Offering		Immediately After This Offering(1)	
		Shares Owned	Percentage	Shares Owned	Percentage
Silver Spike Capital, LLC	Direct	386	100%	3,571,815	40%
Scott Gordon	Direct	—	—	48,215	*
	Indirect(2)	386	100%	3,571,815	40%
All officers and directors as a group (5 persons)	Direct	—	—	62,500	*
	Indirect	386	100%	3,571,815	40%

- (1) Assumes the issuance of 8,928,572 shares of common stock offered hereby. Does not reflect shares of common stock reserved for issuance upon exercise of the underwriters' over-allotment option.
- (2) Represents shares held by our Adviser. Mr. Gordon may be deemed to beneficially own the shares held by our Adviser by virtue of his indirect control of our Adviser. Mr. Gordon disclaims beneficial ownership of the shares held by our Adviser except to the extent of his pecuniary interest in the shares.

\* Less than 1%

The following table sets forth the dollar range of our equity securities that will be beneficially owned by each of our directors immediately after this offering. We are not part of a "family of investment companies," as that term is defined in the 1940 Act.

	Dollar Range of Equity Securities Beneficially Owned(1)(2)(3)
<b>Interested Directors:</b>	
Michael W. Chorske	None
Scott Gordon	Over \$1,000,000(4)
<b>Independent Directors:</b>	
Vivek Buntly Bohra	\$50,001 — \$100,000
Americo Da Corte	None
Tracey Brophy Warson	None

- (1) Beneficial ownership has been determined in accordance with Rule 16a-1(a)(2) of the Exchange Act.
- (2) The dollar range of equity securities beneficially owned in us is based on a price for our common stock of \$14.00.
- (3) The dollar range of equity securities beneficially owned are: none, \$1 — \$10,000, \$10,001 — \$50,000, \$50,001 — \$100,000, \$100,001 — \$500,000, \$500,001 — \$1,000,000, or over \$1,000,000.
- (4) Includes shares held by our Adviser. Mr. Gordon may be deemed to beneficially own the shares held by our Adviser by virtue of his indirect control of our Adviser. Mr. Gordon disclaims beneficial ownership of the shares held by our Adviser except to the extent of his pecuniary interest in the shares.

## DIVIDEND REINVESTMENT PLAN

We have adopted a dividend reinvestment plan that provides for reinvestment of our distributions on behalf of our stockholders, unless a stockholder elects to receive cash as provided below. As a result, if our Board of Directors authorizes, and we declare, a cash distribution, then our stockholders who have not “opted out” of our dividend reinvestment plan will have their cash distributions automatically reinvested in additional shares of our common stock, rather than receiving the cash distributions. Any fractional share otherwise issuable to a participant in the dividend reinvestment plan will instead be paid in cash.

No action will be required on the part of a registered stockholder to have their cash distributions reinvested in shares of our common stock. A registered stockholder may elect to receive an entire distribution in cash by notifying ALPS Fund Services, Inc., the plan administrator and our transfer agent and registrar, in writing so that such notice is received by the plan administrator no later than three days prior to the distribution payment date for distributions to stockholders (the “Payment Date”). Those stockholders whose shares are held by a broker or other financial intermediary may receive distributions in cash by notifying their broker or other financial intermediary of their election. If the stockholder request is received less than three days prior to the Payment Date, then that distribution will be reinvested. However, all subsequent distributions to the stockholder will be paid out in cash.

With respect to each distribution, the Board of Directors reserves the right to either issue new shares or purchase shares in the open market in connection with the implementation of the dividend reinvestment plan. If newly issued shares are used to implement the plan and the most recently computed NAV per share exceeds the market price per share on the Payment Date, the number of shares to be issued to a stockholder will be determined by dividing the total dollar amount of the distribution payable to such stockholder by the market price per share of our common stock at the close of regular trading on the Nasdaq Stock Market on the Payment Date, or if no sale is reported for such day, the average of the reported bid and ask prices. If newly issued shares are used to implement the plan and the market price per share on the Payment Date exceeds the most recently computed NAV per share, the number of shares to be issued to a stockholder will be determined by dividing the total dollar amount of the distribution payable to such stockholder by the greater of (i) the most recently computed NAV per share and (ii) 95% of the market price per share (or such lesser discount to the market price per share that still exceeds the most recently computed NAV per share) at the close of regular trading on the Nasdaq Stock Market on the Payment Date, or, if no sale is reported for such day, the average of the reported bid and ask prices. For example, if the most recently computed NAV per share is \$15.00 and the market price per share on the Payment Date is \$14.00, we will issue shares at \$14.00 per share. If the most recently computed NAV per share is \$15.00 and the market price per share on the Payment Date is \$16.00, we will issue shares at \$15.20 per share (95% of the market price per share on the Payment Date). If the most recently computed NAV per share is \$15.00 and the market price per share on the Payment Date is \$15.50, we will issue shares at \$15.00 per share, as the most recently computed NAV per share is greater than 95% of the market price per share on the Payment Date (\$14.73 per share). If shares are purchased in the open market to implement the plan, the number of shares to be issued to a stockholder shall be determined by dividing the total dollar amount of the distribution payable to such stockholder by the weighted average price per share, excluding any brokerage charges or other charges, of all shares purchased by the plan administrator in the open market in connection with the distribution.

Stockholders who receive distributions in the form of our stock generally are subject to the same federal, state and local tax consequences as are stockholders who elect to receive their distributions in cash; however, since their cash distributions will be reinvested, such stockholders will not receive cash with which to pay any applicable taxes on reinvested distributions. A stockholder’s basis for determining gain or loss upon the sale of our stock received in a distribution from us will be equal to the fair market value of the stock so distributed to the stockholder at the time of the distribution. Any stock received in a distribution will have a holding period for tax purposes commencing on the day following the day on which the shares are credited to the stockholder’s account.

There will be no brokerage charges or other charges for dividend reinvestment to stockholders who participate in the plan. We will pay the plan administrator’s fees under the plan.

Participants may terminate their accounts under the plan by notifying our administrator by mail at 660 Madison Avenue, Suite 1600, New York, NY 10065, or by calling our administrator at (212) 905-4923.

We may terminate the plan upon notice in writing mailed to each participant at least 30 days prior to any record date for the payment of any distribution by us. All correspondence concerning the plan should be directed to our administrator by mail at 660 Madison Avenue, Suite 1600, New York, NY 10065, or by telephone at (212) 905-4923.



## DESCRIPTION OF OUR CAPITAL STOCK

*The following description summarizes material provisions of the Maryland General Corporation Law (the “MGCL”) and our charter and bylaws. This summary is not necessarily complete, and we refer you to the MGCL and our charter and bylaws for a more detailed description of the provisions summarized below.*

### **Capital Stock**

Under the terms of our charter, our authorized stock consists solely of 100,000,000 shares of stock, \$0.01 par value per share, all of which are initially designated as common stock.

As permitted by the MGCL, our charter provides that a majority of the entire Board of Directors, without any action by our stockholders, may amend the charter from time to time to increase or decrease the aggregate number of shares of stock or the number of shares of stock of any class or series that we have authority to issue. Our charter also provides that the Board of Directors may classify or reclassify any unissued shares of stock into one or more classes or series of stock, including preferred stock.

### **Common Stock**

None of our shares of common stock are subject to further calls or to assessments, sinking fund provisions, obligations or potential liabilities associated with ownership of the security (not including investment risks).

Our common stock has been approved for listing on the Nasdaq Stock Market under the ticker symbol “SSIC.” No stock has been authorized for issuance under any equity compensation plans. Under Maryland law, our stockholders generally will not be personally liable for our debts or obligations.

All shares of our common stock have equal rights as to earnings, assets, dividends and voting and, when they are issued, will be duly authorized, validly issued, fully paid and nonassessable. Distributions may be paid to the holders of our common stock if, as and when authorized by our Board of Directors and declared by us out of assets legally available therefor. Shares of our common stock have no preemptive, exchange, conversion or redemption rights, generally have no appraisal rights, and are freely transferable, except where their transfer is restricted by federal and state securities laws or by contract. In the event of a liquidation, dissolution or winding up, each share of our common stock would be entitled to share ratably in all of our assets that are legally available for distribution after we pay all debts and other liabilities and subject to any preferential rights of holders of our preferred stock, if any preferred stock is outstanding at such time. Each share of our common stock is entitled to one vote on all matters submitted to a vote of stockholders, including the election of directors. Except as provided with respect to any other class or series of stock, the holders of our common stock will possess exclusive voting power. There is no cumulative voting in the election of directors, which means that holders of a majority of the outstanding shares of common stock can elect all of our directors, and holders of less than a majority of such shares will be unable to elect any director.

### **Preferred Stock**

Our charter authorizes our Board of Directors to classify and reclassify any unissued shares of stock into other classes or series of stock, including preferred stock. The cost of any such reclassification would be borne by our existing stockholders. Under the terms of our charter, our Board of Directors is authorized to issue preferred stock in one or more classes or series without stockholder approval. Prior to issuance of any other class or series of stock, the Board of Directors is required by the MGCL and our charter to set the preferences, conversion or other rights, voting powers, restrictions, limitations as to dividends or other distributions, qualifications, and terms or conditions of redemption for each class or series. Thus, the Board of Directors could authorize the issuance of shares of preferred stock with terms and conditions that could have the effect of delaying, deferring, or preventing a transaction or a change in control that might involve a premium price for holders of our common stock or otherwise be in their best interest. You should note, however, that any issuance of preferred stock must comply with the requirements of the 1940 Act. The 1940 Act requires, among other things, that (1) immediately after issuance and before any dividend or other distribution is made with respect to our common stock and before any purchase of our common stock is made, the aggregate involuntary liquidation preference of such preferred stock together with the aggregate involuntary liquidation preference or aggregate value of all other senior securities must not exceed an amount equal to two-thirds of our gross assets after deducting the amount of such dividend, distribution or purchase price, as the case may be, and (2) the holders of preferred stock, if any are issued, must be entitled as a class to elect two directors at all times and to elect a majority of the directors if distributions on such preferred stock are in arrears by two full years or more. Certain matters under the 1940 Act require the separate vote of the holders of any issued and outstanding preferred stock. For example, holders of preferred stock, if any, would vote as a separate class from the holders of common stock on a proposal to cease operations as a BDC. We believe that the availability for issuance of preferred stock will provide us with increased flexibility in structuring future financings and acquisitions. We do not, however, currently have any plans to issue preferred stock.

## **Limitation on Liability of Directors and Officers; Indemnification and Advance of Expenses**

Maryland law permits a Maryland corporation to include in its charter a provision eliminating the liability of its directors and officers to the corporation and its stockholders for money damages except for liability resulting from (a) actual receipt of an improper benefit or profit in money, property or services or (b) active and deliberate dishonesty established by a final judgment and that is material to the cause of action. Our charter contains such a provision that eliminates directors' and officers' liability to the maximum extent permitted by Maryland law, subject to the requirements of the 1940 Act.

Maryland law requires a corporation (unless its charter provides otherwise, which our charter does not) to indemnify a director or officer who has been successful, on the merits or otherwise, in the defense of any proceeding to which he or she is made, or threatened to be made, a party by reason of his or her service in that capacity. Maryland law permits a corporation to indemnify its present and former directors and officers, among others, against judgments, penalties, fines, settlements and reasonable expenses actually incurred by them in connection with any proceeding to which they may be made, or threatened to be made, a party by reason of their service in those or other capacities unless it is established that (a) the act or omission of the director or officer was material to the matter giving rise to the proceeding and (1) was committed in bad faith or (2) was the result of active and deliberate dishonesty, (b) the director or officer actually received an improper personal benefit in money, property or services or (c) in the case of any criminal proceeding, the director or officer had reasonable cause to believe that the act or omission was unlawful. Under Maryland law, a Maryland corporation may not indemnify a director or officer in a suit by the corporation or in its right in which the director or officer was adjudged liable to the corporation or in a suit in which the director or officer was adjudged liable on the basis that a personal benefit was improperly received. Nevertheless, a court may order indemnification if it determines that the director or officer is fairly and reasonably entitled to indemnification, even though the director or officer did not meet the prescribed standard of conduct or was adjudged liable on the basis that personal benefit was improperly received. However, indemnification for an adverse judgment in a suit by the corporation or in its right, or for a judgment of liability on the basis that a personal benefit was improperly received, is limited to expenses. In addition, Maryland law permits a corporation to advance reasonable expenses to a director or officer in advance of final disposition of a proceeding upon the corporation's receipt of (a) a written affirmation by the director or officer of his or her good faith belief that he or she has met the standard of conduct necessary for indemnification by the corporation and (b) a written undertaking by him or her or on his or her behalf to repay the amount paid or reimbursed by the corporation if it is ultimately determined that the standard of conduct was not met.

Our charter obligates us, to the maximum extent permitted by Maryland law and subject to the requirements of the 1940 Act, to indemnify any present or former director or officer or any individual who, while a director or officer and at our request, serves or has served another corporation, partnership, joint venture, trust, limited liability company, employee benefit plan or other enterprise as a director, officer, partner, trustee, employee, or agent, who is made, or threatened to be made, a party to, or witness in, a proceeding by reason of his or her service in such capacity from and against any claim or liability to which that person may become subject or which that person may incur by reason of his or her status as such, and to pay or reimburse their reasonable expenses in advance of final disposition of a proceeding. Our bylaws permit us to indemnify and advance expenses to employees and agents who are not officers or directors to the extent permissible under the MGCL and the 1940 Act and as may be determined by our Board of Directors. In accordance with the 1940 Act, we will not indemnify any person for any liability to which such person would be subject by reason of such person's willful misfeasance, bad faith, gross negligence or reckless disregard of the duties involved in the conduct of his or her office.

## **Provisions of the Maryland General Corporation Law and Our Charter and Bylaws**

Provisions of the MGCL and of our charter and bylaws could deter takeover attempts and have an adverse impact on the price of our common stock. The MGCL, our charter and our bylaws contain provisions that may discourage, delay or make more difficult a change in control of us or the removal of our directors. In addition to the matters described below, we have adopted other measures pursuant to the MGCL, some of which are described above, that may make it difficult for a third-party to obtain control of us, including provisions of our charter authorizing our Board of Directors to classify or reclassify shares of our stock in one or more classes or series, to cause the issuance of additional shares of our stock, and to amend our charter, without stockholder approval, to increase or decrease the number of shares of stock that we have authority to issue. These provisions, as well as other provisions of our charter and bylaws, may delay, defer or prevent a transaction or a change in control that might otherwise be in the best interests of our stockholders

These provisions are expected to discourage certain coercive takeover practices and inadequate takeover bids and to encourage persons seeking to acquire control of us to negotiate first with our Board of Directors. We believe that the benefits of these provisions outweigh the potential disadvantages of discouraging any such acquisition proposals because, among other things, the negotiation of such proposals may improve their terms.

### ***Classified Board of Directors***

Our Board of Directors is divided into three classes of directors serving staggered three-year terms. At each annual meeting of our stockholders, the successors to the class of directors whose terms expire at such meeting will be elected to hold office for a term expiring at the annual meeting of stockholders held in the third year following the year of their election. Each director holds office for the term to which he or she is elected and until his or her successor is duly elected and qualifies. A classified board of directors may render a change in control of us or removal of our incumbent management more difficult. We believe, however, that the longer time required to elect a majority of a classified board of directors will help to ensure the continuity and stability of our management and policies.

### ***Election of Directors***

Our charter provides that the affirmative vote of the holders of a majority of the shares of stock outstanding and entitled to vote in the election of directors will be required to elect a director, unless our bylaws provide otherwise. Our bylaws provide that the affirmative vote of a plurality of the votes cast in the election of directors at a meeting of stockholders duly called and at which a quorum is present will be required to elect a director, unless there is a contested election, in which case a director will be elected only if the director receives a majority of the votes entitled to be cast for that director. Our Board of Directors has the exclusive right to amend the bylaws to alter the vote required to elect directors.

### ***Number of Directors; Vacancies; Removal***

Our charter provides that the number of directors will be set only by the Board of Directors in accordance with our bylaws. Our bylaws provide that a majority of our entire Board of Directors may at any time increase or decrease the number of directors. However, unless our bylaws are amended, the number of directors may never be less than one nor more than 15. Pursuant to Section 3-802(b) of the MGCL, we have elected in our charter to be subject to Section 3-804(c) of the MGCL regarding the filling of vacancies on the Board of Directors. Accordingly, except as may be provided by the Board of Directors in setting the terms of any class or series of preferred stock, any and all vacancies on the Board of Directors may be filled only by the affirmative vote of a majority of the remaining directors in office, even if the remaining directors do not constitute a quorum, and any director elected to fill a vacancy will serve for the remainder of the full term of the directorship in which the vacancy occurred and until a successor is elected and qualifies, subject to any applicable requirements of the 1940 Act.

Our charter provides that, subject to the rights of holders of preferred stock, a director may be removed only for cause, as defined in our charter, and then only by the affirmative vote of at least 80% of the votes entitled to be cast generally in the election of directors.

### ***Action by Stockholders***

Under the MGCL, unless a corporation's charter provides otherwise (which our charter does not) stockholder action can be taken only at an annual or special meeting of stockholders or by unanimous written consent in lieu of a meeting. These provisions, combined with the requirements of our bylaws regarding the calling of a stockholder-

requested special meeting of stockholders discussed below, may have the effect of delaying consideration of a stockholder proposal until the next annual meeting.

#### ***Advance Notice Provisions for Stockholder Nominations and Stockholder Proposals***

Our bylaws provide that with respect to an annual meeting of stockholders, nominations of individuals for election to the Board of Directors and the proposal of other business to be considered by stockholders may be made only (1) pursuant to our notice of the meeting, (2) by or at the direction of the Board of Directors or (3) by any stockholder who was a stockholder of record at the record date set by our Board of Directors for the purpose of determining stockholders entitled to vote at the meeting, at the time of giving notice as provided for in our bylaws and at the time of the meeting (and any postponement or adjournment thereof), who is entitled to vote at the meeting in the election of each individual so nominated or on such other business and who has complied with the advance notice procedures of the bylaws. With respect to special meetings of stockholders, only the business specified in our notice of the meeting may be brought before the meeting. Nominations of individuals for election to the Board of Directors at a special meeting may be made only (1) by or at the direction of the Board of Directors or (2) provided that the special meeting has been properly called for the purpose of electing directors, by any stockholder who was a stockholder of record at the record date set by our Board of Directors for the purpose of determining stockholders entitled to vote at the meeting, at the time of giving notice as provided for in our bylaws and at the time of the meeting (and any postponement or adjournment thereof), who is entitled to vote at the meeting in the election of each individual so nominated and who has complied with the advance notice provisions of the bylaws.

The purpose of requiring stockholders to give us advance notice of nominations and other business is to afford our Board of Directors a meaningful opportunity to consider the qualifications of the proposed nominees and the advisability of any other proposed business and, to the extent deemed necessary or desirable by our Board of Directors, to inform stockholders and make recommendations about such qualifications or business, as well as to provide a more orderly procedure for conducting meetings of stockholders. Although our bylaws do not give our Board of Directors any power to disapprove stockholder nominations for the election of directors or proposals recommending certain action, they may have the effect of precluding a contest for the election of directors or the consideration of stockholder proposals if proper procedures are not followed and of discouraging or deterring a third-party from conducting a solicitation of proxies to elect its own slate of directors or to approve its own proposal without regard to whether consideration of such nominees or proposals might be harmful or beneficial to us and our stockholders.

#### ***Calling of Special Meetings of Stockholders***

Our bylaws provide that special meetings of stockholders may be called by our Board of Directors, the Chairperson of the Board of Directors, and certain of our officers. Additionally, our bylaws provide that, subject to the satisfaction of certain procedural and informational requirements by the stockholders requesting the meeting, a special meeting of stockholders will be called by our secretary upon the written request of stockholders entitled to cast not less than a majority of all the votes entitled to be cast at such meeting.

#### ***Approval of Extraordinary Corporate Action; Amendment of Charter and Bylaws***

Under Maryland law, a Maryland corporation generally cannot dissolve, amend its charter, merge, convert to another form of entity, sell all or substantially all of its assets, engage in a share exchange or engage in similar transactions outside the ordinary course of business, unless approved by the affirmative vote of stockholders entitled to cast at least two-thirds of the votes entitled to be cast on the matter. However, a Maryland corporation may provide in its charter for approval of these matters by a lesser percentage, but not less than a majority of all of the votes entitled to be cast on the matter. Our charter generally provides for approval of charter amendments and extraordinary transactions by the stockholders entitled to cast at least a majority of the votes entitled to be cast on the matter if such action is declared advisable by the Board of Directors.

However, our charter provides that approval of the following matters requires the affirmative vote of stockholders entitled to cast at least 80% of the votes entitled to be cast on the matter:

- a) amendments to the provisions of our charter relating to our purpose, the classification of our Board of Directors, the power of our Board of Directors to fix the number of directors and to fill vacancies on our Board of Directors, the vote required to elect or remove a director, amendments to our charter, extraordinary transactions, and our Board of Directors' exclusive power to amend our bylaws;

- b) charter amendments that would convert us from a closed-end company to an open-end company or make our common stock a redeemable security (within the meaning of the 1940 Act);
- c) our liquidation or dissolution or any amendment to our charter to effect any such liquidation or dissolution;
- d) any merger, consolidation, conversion, share exchange, or sale or exchange of all or substantially all of our assets;
- e) transaction between us and any person or group of persons acting together that is entitled to exercise or direct the exercise, or acquire the right to exercise or direct the exercise, directly or indirectly (other than solely by virtue of a revocable proxy), of one-tenth or more of the voting power in the election of our directors generally, or any person controlling, controlled by, or under common control with, employed by or acting as an agent of, any such person or member of such group; or
- f) issuance or transfer by the Company (in one transaction or a series of transactions in any 12-month period) of any securities of the Company to any other person in exchange for cash, securities or other property (or a combination thereof) having an aggregate fair market value (as determined by the Board of Directors) of \$1,000,000 or more excluding (i) issuances or transfers of debt securities of the Company, (ii) sales of any securities of the Company in connection with a public offering, (iii) issuances of any securities of the Company pursuant to a dividend reinvestment plan and/or cash purchase plan adopted by the Company, (iv) issuances of any securities of the Company upon the exercise of any stock subscription rights distributed by the Company and (v) portfolio transactions effected by the Company in the ordinary course of business.

However, if such amendment, proposal, or transaction is approved by at least two-thirds of our continuing directors (in addition to approval by our Board of Directors), such amendment, proposal, or transactions may be approved by a majority of the votes entitled to be cast on such a matter, except that any of the proposals or transactions contemplated by paragraphs (d), (e) or (f) above that would not otherwise require stockholder approval under the MGCL will not require further stockholder approval unless another provision of our charter requires such approval. In either event, in accordance with the requirements of the 1940 Act, any such amendment, proposal, or transaction that would have the effect of changing the nature of our business so as to cause us to cease to be, or to withdraw our election as, a BDC would be required to be approved by a majority of our outstanding voting securities, as defined under the 1940 Act. The “continuing directors” are defined in our charter as (1) our current directors as named therein, (2) those directors whose nomination for election by the stockholders or whose election by the directors to fill vacancies is approved by a majority of such named directors then on the Board of Directors, or (3) any successor directors whose nomination for election by the stockholders or whose election by the directors to fill vacancies is approved by a majority of continuing directors or successor continuing directors then in office. The holders of any preferred stock outstanding would have a separate class vote on any conversion to an open-end company.

Our charter and bylaws provide that the Board of Directors shall have the exclusive power to adopt, alter or repeal any provision of our bylaws and to make new bylaws.

#### ***No Appraisal Rights***

Except with respect to appraisal rights arising in connection with the Maryland Control Share Acquisition Act discussed below, as permitted by the MGCL, our charter provides that stockholders will not be entitled to exercise appraisal rights unless the Board of Directors, upon the affirmative vote of a majority of the entire Board of Directors, shall determine that such rights shall apply.

## ***Control Share Acquisitions***

We are subject to Subtitle 7 of Title 3 of the MGCL, the “Maryland Control Share Acquisition Act.” The Maryland Control Share Acquisition Act provides that control shares of a Maryland corporation acquired in a control share acquisition have no voting rights except to the extent approved by the affirmative vote of stockholders entitled to cast two-thirds of the votes entitled to be cast on the matter. Shares owned by the acquirer, by officers or by directors who are employees of the corporation are excluded from shares entitled to vote on the matter. Control shares are voting shares of stock which, if aggregated with all other shares of stock owned by the acquirer or in respect of which the acquirer is able to exercise or direct the exercise of voting power (except solely by virtue of a revocable proxy), would entitle the acquirer to exercise voting power in electing directors within one of the following ranges of voting power:

- one-tenth or more but less than one-third;
- one-third or more but less than a majority; or
- a majority or more of all voting power.

In general, the requisite stockholder approval must be obtained each time an acquirer crosses one of the thresholds of voting power set forth above or increases its ownership within one of the tiers for which stockholder approval was previously obtained. Control shares do not include shares that the acquiring person is then entitled to vote as a result of having previously obtained stockholder approval. A control share acquisition means the acquisition of issued and outstanding control shares, subject to certain exceptions.

A person who has made or proposes to make a control share acquisition may compel the board of directors of the corporation to call a special meeting of stockholders to be held within 50 days of demand to consider the voting rights of the shares. The right to compel the calling of a special meeting is subject to the satisfaction of certain conditions, including an undertaking to pay the expenses of the meeting. If no request for a meeting is made, the corporation may itself present the question at any stockholders’ meeting.

If voting rights are not approved at the meeting or if the acquiring person does not deliver an acquiring person statement as required by the statute, then the corporation may redeem for fair value any or all of the control shares, except those for which voting rights have previously been approved. The right of the corporation to redeem control shares is subject to certain conditions and limitations, including, as provided in our bylaws, compliance with the 1940 Act. Fair value is determined, without regard to the absence of voting rights for the control shares, as of the date of the last control share acquisition by the acquirer or, if a meeting of stockholders at which the voting rights of the shares are considered and not approved is held, as of the date of such meeting. If voting rights for control shares are approved at a stockholders’ meeting and the acquirer becomes entitled to vote a majority of the shares entitled to vote, all other stockholders may exercise appraisal rights. The fair value of the shares as determined for purposes of appraisal rights may not be less than the highest price per share paid by the acquirer in the control share acquisition.

The Maryland Control Share Acquisition Act does not apply (a) to shares acquired in a merger, consolidation or share exchange if the corporation is a party to the transaction or (b) to acquisitions approved or exempted by the charter or bylaws of the corporation. Our bylaws provide that the Maryland Control Share Acquisition Act does not apply to shares acquired by our Adviser and/or our Adviser’s affiliates.

## ***Business Combinations***

We are subject to Subtitle 6 of Title 3 of the MGCL, the “Maryland Business Combination Act,” subject to any applicable requirements of the 1940 Act. Pursuant to the Maryland Business Combination Act, certain “business combinations” between a Maryland corporation and an interested stockholder or an affiliate of an interested stockholder are prohibited for five years after the most recent date on which the interested stockholder becomes an interested stockholder. Such “business combinations” include a merger, consolidation, share exchange or, in circumstances specified in the statute, an asset transfer or issuance or reclassification of equity securities. An interested stockholder is defined as:

- any person who beneficially owns 10% or more of the voting power of the corporation’s outstanding voting stock; or

- an affiliate or associate of the corporation who, at any time within the two-year period prior to the date in question, was the beneficial owner of 10% or more of the voting power of the then-outstanding voting stock of the corporation.

A person is not an interested stockholder under this statute if the corporation's board of directors approves in advance the transaction by which the stockholder otherwise would have become an interested stockholder. However, in approving a transaction, the board may provide that its approval is subject to compliance, at or after the time of approval, with any terms and conditions determined by the board.

After the five-year prohibition, any business combination between the corporation and an interested stockholder generally must be recommended by the corporation's board of directors and approved by the affirmative vote of at least:

- 80% of the votes entitled to be cast by holders of outstanding shares of voting stock of the corporation; and
- two-thirds of the votes entitled to be cast by holders of voting stock of the corporation other than voting stock held by the interested stockholder with whom or with whose affiliate the business combination is to be effected or held by an affiliate or associate of the interested stockholder.

These super-majority vote requirements do not apply if the corporation's common stockholders receive a minimum price, as defined under Maryland law, for their shares in the form of cash or other consideration in the same form as previously paid by the interested stockholder for its shares.

The statute permits various exemptions from its provisions, including business combinations that are exempted by the board of directors before the time that the interested stockholder becomes an interested stockholder. Our Board of Directors has adopted a resolution that any business combination between us and any other person is exempted from the provisions of the Business Combination Act, provided that the business combination is first approved by the Board of Directors, including a majority of the directors who are not "interested persons," as defined in the 1940 Act. This resolution, however, may be altered or repealed in whole or in part at any time. If this resolution is repealed, or the Board of Directors does not otherwise approve a business combination, the statute may discourage others from trying to acquire control of us and increase the difficulty of consummating such a transaction.

### ***Subtitle 8 Title 3 of the Maryland General Corporation Law***

We are subject to Subtitle 8 of Title 3 of the MGCL. Subtitle 8 permits Maryland corporations with a class of equity securities registered under the Exchange Act and at least three independent directors to elect to be subject, by provision in its charter or bylaws or a resolution of its board of directors, without stockholder approval, and notwithstanding any contrary provision in the charter or bylaws, to any or all of the following five provisions: a classified board; a two-thirds stockholder vote requirement for removing a director; a requirement that the number of directors may be fixed only by vote of the directors; a requirement that a vacancy on the board be filled only by the remaining directors and that directors elected to fill a vacancy will serve for the remainder of the full term of the class of directors in which the vacancy occurred; and that the request of stockholders entitled to cast at least a majority of all the votes entitled to be cast at the meeting is required for the calling of a special meeting of stockholders. Through provisions in our charter and bylaws, some unrelated to Subtitle 8, we already include provisions classifying our Board of Directors in three classes serving staggered three-year terms; require the affirmative vote of the holders of not less than 80% of all of the votes entitled to be cast on the matter for the removal of any director from the board, which removal is allowed only for cause; vest in the board the exclusive power to fix the number of directorships, subject to limitations set forth in our charter and bylaws, and fill vacancies for the remainder of the full term of the class of directors in which the vacancy occurred; and require the written request of stockholders entitled to cast not less than a majority of all votes entitled to be cast at such meeting to call a stockholder-initiated special meeting.

### ***Forum Selection Clause***

Our bylaws provide that, unless we consent in writing to the selection of an alternative forum, the sole and exclusive forum for (a) any derivative action or proceeding brought on our behalf, (b) any Internal Corporate Claim, as such term is defined in the MGCL, (c) any action asserting a claim of breach of any duty owed by any of our directors, officers, employees or other agents to us or to our stockholders, (d) any action asserting a claim against us or any of our directors, officers, employees or other agents arising pursuant to any provision of the MGCL or our charter or bylaws, or (e) any other action asserting a claim against us or any of our directors, officers, employees or other agents that is governed by the internal affairs doctrine shall be, in each case, the Circuit Court for Baltimore City, Maryland, or, if that court does not have jurisdiction, the United States District Court for the District of Maryland, Northern Division. Notwithstanding the foregoing, this provision does not apply to claims arising under the federal securities laws, or any other claim for which the federal courts have exclusive jurisdiction.

Any investor purchasing or otherwise acquiring our shares is deemed to have notice of and consented to the exclusive forum selection provision. The provision may increase costs for a shareholder to bring a claim and may discourage claims or limit shareholders' ability to bring a claim in a judicial forum that they find favorable. It is also possible that a court could rule that the provision is inapplicable or unenforceable.

### ***Waiver of Corporate Opportunity Doctrine***

Our charter provides that we, by resolution of our Board of Directors, may renounce any interest or expectancy of ours in (or in being offered an opportunity to participate in) business opportunities that are presented to us or developed by or presented to one of more of our directors or officers.

### ***Conflict with the 1940 Act***

Our bylaws provide that, if and to the extent that any provision of the MGCL, including the Maryland Control Share Acquisition Act and the Maryland Business Combination Act, or any provision of our charter or bylaws, conflicts with any provision of the 1940 Act, or the rules, regulations, or guidance of the SEC or its staff thereunder, the applicable provision of the 1940 Act or the rules, regulations, or guidance of the SEC or its staff thereunder will control.



## MATERIAL U.S. FEDERAL INCOME TAX CONSIDERATIONS

The following is a description of the material U.S. federal income tax consequences of owning and disposing of shares of our common stock. The discussion below provides general tax information relating to an investment in our shares, but it does not purport to be a comprehensive description of all the U.S. federal income tax considerations that may be relevant to a particular person's decision to invest in our shares. This discussion does not describe all of the tax consequences that may be relevant in light of the particular circumstances of a beneficial owner of shares, including alternative minimum tax consequences, Medicare contribution tax consequences and tax consequences applicable to beneficial owners subject to special rules, such as:

- certain financial institutions;
- regulated investment companies;
- real estate investment trusts;
- dealers or traders in securities that use a mark-to-market method of tax accounting;
- persons holding shares of our common stock as part of a straddle, wash sale, conversion transaction or integrated transaction or persons entering into a constructive sale with respect to the shares;
- U.S. Holders (as defined below) whose functional currency for U.S. federal income tax purposes is not the U.S. dollar;
- entities classified as partnerships or otherwise treated as pass-through entities for U.S. federal income tax purposes;
- certain former U.S. citizens and residents and expatriated entities;
- tax-exempt entities, including an "individual retirement account" or "Roth IRA"; or
- insurance companies.

If an entity that is classified as a partnership for U.S. federal income tax purposes holds shares, the U.S. federal income tax treatment of a partner will generally depend on the status of the partner and the activities of the partnership. Partnerships holding shares and partners in such partnerships should consult their tax advisers as to the particular U.S. federal income tax consequences of holding and disposing of our shares in light of their specific circumstances.

The following discussion applies only to an owner of shares that (i) is treated as the beneficial owner of such shares for U.S. federal income tax purposes and (ii) holds such shares as capital assets.

This discussion is based on the Code, administrative pronouncements, judicial decisions, and final, temporary and proposed Treasury regulations all as of the date hereof, any of which is subject to change, possibly with retroactive effect.

You are urged to consult your tax adviser with regard to the application of the U.S. federal income and estate tax laws to their particular situations, as well as any tax consequences arising under the laws of any state, local or non-U.S. taxing jurisdiction.

### **Taxation as a Regulated Investment Company**

We intend to qualify as a regulated investment company under Subchapter M of the Code (a "RIC") in the current and future taxable years. Assuming that we so qualify and that we satisfy the distribution requirements described below, we generally will not be subject to U.S. federal income tax on income distributed in a timely manner to shareholders.

To qualify as a RIC for any taxable year, we must, among other things, satisfy both an income test and an asset diversification test for such taxable year. Specifically, (i) at least 90% of our gross income for such taxable year must consist of dividends; interest; payments with respect to certain securities loans; gains from the sale or other disposition of stock, securities or foreign currencies; other income (including, but not limited to, gains from options, futures or forward contracts) derived with respect to our business of investing in such stock, securities or currencies; and net income derived from interests in “qualified publicly traded partnerships” (such income, “Qualifying RIC Income”) and (ii) our holdings must be diversified so that, at the end of each quarter of such taxable year, (a) at least 50% of the value of our total assets is represented by cash and cash items, securities of other RICs, U.S. government securities and other securities, with such other securities limited, in respect of any one issuer, to an amount not greater than 5% of the value of our total assets and not greater than 10% of the outstanding voting securities of such issuer and (b) not more than 25% of the value of our total assets is invested (x) in the securities (other than U.S. government securities or securities of other RICs) of any one issuer or of two or more issuers that we control and that are engaged in the same, similar or related trades or businesses or (y) in the securities of one or more “qualified publicly traded partnerships.” A “qualified publicly traded partnership” is generally defined as an entity that is treated as a partnership for U.S. federal income tax purposes if (i) interests in such entity are traded on an established securities market or are readily tradable on a secondary market or the substantial equivalent thereof and (ii) less than 90% of such entity’s gross income for the relevant taxable year consists of Qualifying RIC Income. Our share of income derived from a partnership other than a “qualified publicly traded partnership” will be treated as Qualifying RIC Income only to the extent that such income would have constituted Qualifying RIC Income if derived directly by us.

In order to be exempt from U.S. federal income tax on our distributed income, we must distribute to our shareholders on a timely basis at least 90% of the sum of (i) our “investment company taxable income” (determined prior to the deduction for dividends paid) and (ii) our net tax-exempt interest income for each taxable year. In general, a RIC’s “investment company taxable income” for any taxable year is its taxable income, determined without regard to net capital gain (that is, the excess of net long-term capital gains over net short-term capital losses) and with certain other adjustments. Any taxable income, including any net capital gain, that we do not distribute to our shareholders in a timely manner will be subject to U.S. federal income tax at regular corporate rates.

A RIC will be subject to a nondeductible 4% excise tax on certain amounts that we fail to distribute during each calendar year. In order to avoid this excise tax, a RIC must distribute during each calendar year an amount at least equal to the sum of (i) 98% of its ordinary taxable income for the calendar year, (ii) 98.2% of its capital gain net income for the one-year period ended on October 31 of the calendar year and (iii) any ordinary income and capital gains for previous years that were not distributed during those years. For purposes of determining whether we have met this distribution requirement, (i) certain ordinary gains and losses that would otherwise be taken into account for the portion of the calendar year after October 31 will be treated as arising on January 1 of the following calendar year and (ii) we will be deemed to have distributed any income or gains on which we have paid U.S. federal income tax. Amounts distributed and reinvested pursuant to our dividend reinvestment plan will be treated as distributed for all U.S. tax purposes, including for purposes of the distribution requirement described above and the excise tax.

If we fail to qualify as a RIC or fail to satisfy the 90% distribution requirement in any taxable year, we will be subject to U.S. federal income tax at regular corporate rates on our taxable income, including our net capital gain, even if such income is distributed to our shareholders, and all distributions out of earnings and profits would be taxable as dividend income. Such distributions generally would be eligible for the dividends-received deduction in the case of corporate U.S. Holders (defined below) and would constitute “qualified dividend income” for individual U.S. Holders. See “— Tax Consequences to U.S. Holders — Distributions.” In addition, we could be required to recognize unrealized gains, pay taxes and make distributions (which could be subject to interest charges) before requalifying for taxation as a RIC. If we fail to satisfy the income test or diversification test described above, however, we may be able to avoid losing our status as a RIC by timely curing such failure, paying a tax and/or providing notice of such failure to the U.S. Internal Revenue Service (the “IRS”).

In order to meet the distribution requirements necessary to be exempt from U.S. federal income and excise tax, we may be required to make distributions in excess of the income we actually receive in respect of our investments. In particular, we may be required to make distributions in respect of taxable income we recognize as a result of

investing in OID and PIK instruments, without having actually received any amounts in respect of such taxable income.

### **Tax Consequences to U.S. Holders**

The discussion in this section applies to you only if you are a U.S. Holder. A “U.S. Holder” is (i) an individual who is a citizen or resident of the United States; (ii) a corporation, or other entity taxable as a corporation, created or organized in or under the laws of the United States, any state therein or the District of Columbia; or (iii) an estate or trust the income of which is subject to U.S. federal income taxation regardless of its source.

*Distributions.* Distributions of our ordinary income and net short-term capital gains will, except as described below with respect to distributions of “qualified dividend income,” generally be taxable to you as ordinary income to the extent such distributions are paid out of our current or accumulated earnings and profits, as determined for U.S. federal income tax purposes. Distributions (or deemed distributions, as described below), if any, of net capital gains will be taxable as long-term capital gains, regardless of the length of time you have owned our shares. A distribution of an amount in excess of our current and accumulated earnings and profits will be treated as a return of capital that will be applied against and reduce your basis in our shares. If the amount of any such distribution exceeds your basis in our shares, the excess will be treated as gain from a sale or exchange of our shares.

The ultimate tax characterization of the distributions that we make during any taxable year cannot be determined until after the end of the taxable year. As a result, it is possible that we will make total distributions during a taxable year in an amount that exceeds our current and accumulated earnings and profits.

Distributions of our “qualified dividend income” to an individual or other non-corporate U.S. Holder will be treated as “qualified dividend income” and will therefore be taxed at rates applicable to long-term capital gains, provided that the U.S. Holder meets certain holding period and other requirements with respect to our shares and that we meet certain holding period and other requirements with respect to the underlying shares of stock. “Qualified dividend income” generally includes dividends from domestic corporations and dividends from foreign corporations that meet certain specified criteria.

Dividends distributed to a corporate U.S. Holder will qualify for the dividends-received deduction only to the extent that the dividends consist of distributions of dividends eligible for the dividends-received deduction received by us, we meet certain holding period requirements with respect to the underlying shares of stock and the U.S. Holder meets certain holding period and other requirements with respect to the underlying shares of stock. Dividends eligible for the dividends-received deduction generally are dividends from domestic corporations.

We intend to distribute our net capital gains at least annually. If, however, we retain any net capital gains for reinvestment, we may elect to treat those net capital gains as having been distributed to our shareholders. If we make this election, you will be required to report your share of our undistributed net capital gain as long-term capital gain and will be entitled to claim your share of the U.S. federal income taxes paid by us on that undistributed net capital gain as a credit against your own U.S. federal income tax liability, if any, and to claim a refund on a properly filed U.S. federal income tax return to the extent that the credit exceeds your tax liability. In addition, you will be entitled to increase your adjusted tax basis in our shares by the difference between your share of such undistributed net capital gain and the related credit and/or refund. There can be no assurance that we will make this election if we retain all or a portion of our net capital gain for a taxable year.

Because the tax treatment of a distribution depends upon our current and accumulated earnings and profits, a distribution received shortly after an acquisition of shares may be taxable, even though, as an economic matter, the distribution represents a return of your initial investment. Distributions will be treated in the manner described above regardless of whether paid in cash or invested in additional shares pursuant to our dividend reinvestment plan. Although dividends generally will be treated as distributed when paid, dividends declared in October, November or December, payable to shareholders of record on a specified date in one of those months, and paid during the following January, will be treated for U.S. federal income tax purposes as having been distributed by us and received by shareholders on December 31 of the year in which declared. Shareholders will be notified annually as to the U.S. federal tax status of distributions.

*Sales and Redemptions of Shares.* In general, upon the sale or other disposition of shares, you will recognize capital gain or loss in an amount equal to the difference, if any, between the amount realized on the sale or other disposition and your adjusted tax basis in the relevant shares. Such gain or loss generally will be long-term capital gain or loss if your holding period for the relevant shares was more than one year on the date of the sale or other disposition. Under current law, net capital gain (that is, the excess of net long-term capital gains over net short-term capital losses) recognized by non-corporate U.S. Holders is generally subject to U.S. federal income tax at lower rates than the rates applicable to ordinary income.

Losses recognized by you on the sale or other disposition of shares held for six months or less will be treated as long-term capital losses to the extent of any distribution of long-term capital gain received (or deemed received, as discussed above) with respect to such shares. In addition, no loss will be allowed on a sale or other disposition of shares if you acquire shares (including pursuant to our dividend reinvestment plan), or enter into a contract or option to acquire shares, within 30 days before or after such sale or other disposition. In such a case, the basis of the shares acquired will be adjusted to reflect the disallowed loss.

Under U.S. Treasury regulations, if you recognize losses with respect to shares of \$2 million or more if you are an individual, or \$10 million or more if you are a corporation, you must file with the IRS a disclosure statement on IRS Form 8886. Direct shareholders of portfolio securities are in many cases exempted from this reporting requirement, but under current guidance, shareholders of a RIC are not exempted. The fact that a loss is reportable under these regulations does not affect the legal determination of whether your treatment of the loss is proper. Certain states may have similar disclosure requirements.

*Backup Withholding and Information Reporting.* Payments on our shares (including of reinvested dividends) and proceeds from a sale or other disposition of shares will be subject to information reporting unless you are an exempt recipient. You will be subject to backup withholding on all such amounts unless (i) you are an exempt recipient or (ii) you provide your correct taxpayer identification number (generally, on IRS Form W-9) and certify that you are not subject to backup withholding. Backup withholding is not an additional tax. Any amounts withheld pursuant to the backup withholding rules will be allowed as a credit against your U.S. federal income tax liability and may entitle you to a refund, provided that the required information is furnished to the IRS on a timely basis.

### **Tax Consequences to Non-U.S. Holders**

The discussion in this section applies to you only if you are a Non-U.S. Holder. A “Non-U.S. Holder” is a person that, for U.S. federal income tax purposes, is a beneficial owner of shares and is a nonresident alien individual, a foreign corporation, a foreign trust or a foreign estate. The discussion below does not apply to you if you are a nonresident alien individual and are present in the United States for 183 days or more during any taxable year; a nonresident alien individual who is a former citizen or resident of the United States; an expatriated entity; a controlled foreign corporation; a passive foreign investment company; a foreign government for purposes of Section 892 of the Code or a tax-exempt organization for U.S. federal income tax purposes. You should consult your tax adviser with respect to the particular tax consequences to you of an investment in shares of our common stock.

If the income that you derive from your investment in our shares is not “effectively connected” with a U.S. trade or business conducted by you (or, if an applicable tax treaty so provides, you do not maintain a permanent establishment in the United States to which such income is attributable), distributions of “investment company taxable income” to you (including amounts reinvested pursuant to our dividend reinvestment plan) will generally be subject to U.S. federal withholding tax at a rate of 30% (or lower rate under an applicable tax treaty). Provided that certain requirements are satisfied, this withholding tax will not be imposed on dividends paid by us to the extent that the underlying income out of which the dividends are paid consists of U.S.-source interest income or short-term capital gains that would not have been subject to U.S. withholding tax if received directly by the Non-U.S. Holder (“interest-related dividends” and “short-term capital gain dividends,” respectively).

If the income you derive from your investment in our shares is not “effectively connected” with a U.S. trade or business conducted by you (or, if an applicable tax treaty so provides, you do not maintain a permanent establishment in the United States to which such income is attributable) you will generally be exempt from U.S. federal income tax on capital gain dividends and any amounts we retain that are designated as undistributed capital gains. In addition, you will generally be exempt from U.S. federal income tax on any gains realized upon the sale or exchange of shares.

If the income you derive from your investment in our shares is “effectively connected” with a U.S. trade or business conducted by you (and, if required by an applicable tax treaty, is attributable to a U.S. permanent establishment maintained by the Non-U.S. Holder), any distributions of “investment company taxable income,” any capital gain dividends, any amounts we retain that are designated as undistributed capital gains and any gains realized upon the sale or exchange of shares will be subject to U.S. federal income tax, on a net income basis, at the rates applicable to U.S. Holders. If you are a corporation, you may also be subject to the U.S. branch profits tax.

In order to qualify for the exemption from U.S. withholding on interest-related dividends, to qualify for an exemption from U.S. backup withholding (discussed below) and to qualify for a reduced rate of U.S. withholding tax on our distributions pursuant to an income tax treaty, you must generally deliver to the withholding agent a properly executed IRS form (generally, Form W-8BEN or Form W-8BEN-E, as applicable). In order to claim a refund of any Company-level taxes imposed on undistributed net capital gain, any withholding taxes or any backup withholding, you must obtain a U.S. taxpayer identification number and file a U.S. federal income tax return, even if you would not otherwise be required to obtain a U.S. taxpayer identification number or file a U.S. income tax return.

*Backup Withholding and Information Reporting.* Information returns will be filed with the IRS in connection with certain payments on the shares and may be filed in connection with payments of the proceeds from a sale or other disposition of shares. You may be subject to backup withholding on distributions or on the proceeds from a redemption or other disposition of shares if you do not certify your non-U.S. status under penalties of perjury or otherwise establish an exemption. Backup withholding is not an additional tax. Any amounts withheld pursuant to the backup withholding rules will be allowed as a credit against your U.S. federal income tax liability, if any, and may entitle you to a refund, provided that the required information is furnished to the IRS on a timely basis.

*FATCA.* Under Sections 1471 through 1474 of the Code (“FATCA”), a withholding tax at the rate of 30% will generally be imposed on payments of dividends on shares to certain foreign entities (including financial intermediaries) unless the foreign entity provides the withholding agent with certifications and other information (which may include information relating to ownership by U.S. persons of interests in, or accounts with, the foreign entity). Treasury and the IRS have issued proposed regulations that (i) provide that “withholdable payments” will not include gross proceeds from the disposition of property that can produce U.S.-source dividends or interest, as otherwise would have been the case after December 31, 2018, and (ii) state that taxpayers may rely on these provisions of the proposed regulations until final regulations are issued. If FATCA withholding is imposed, a beneficial owner of shares that is not a foreign financial institution generally may obtain a refund of any amounts withheld by filing a U.S. federal income tax return (which may entail significant administrative burden). You should consult your tax adviser regarding the possible implications of FATCA on your investment in our shares.

**All stockholders should consult their own tax advisors with respect to the U.S. federal income and withholding tax consequences, and state, local and non-U.S. tax consequences, of an investment in our common stock. We will not pay any additional amounts in respect to any amounts withheld.**

## REGULATION

### Business Development Company Regulations

We have elected to be regulated as a BDC under the 1940 Act. The 1940 Act contains prohibitions and restrictions relating to transactions between BDCs and their affiliates, principal underwriters and affiliates of those affiliates or underwriters. The 1940 Act requires that a majority of the directors be persons other than “interested persons,” as that term is defined in the 1940 Act.

In addition, the 1940 Act provides that we may not change the nature of our business so as to cease to be, or to withdraw our election as, a BDC unless approved by a majority of our outstanding voting securities. The 1940 Act defines “a majority of the outstanding voting securities” as the lesser of (i) 67% or more of the voting securities present at a meeting if the holders of more than 50% of our outstanding voting securities are present or represented by proxy or (ii) 50% of our voting securities.

As a BDC, we will not generally be permitted to invest in any portfolio company in which our Adviser or any of its affiliates currently have an investment or to make any co-investments with our Adviser or its affiliates without an exemptive order from the SEC. SSC expects to submit an exemptive application to the SEC to permit us to co-invest with other funds managed by SSC or its affiliates in a manner consistent with our investment objective, positions, policies, strategies and restrictions as well as regulatory requirements and other pertinent factors. There can be no assurance that any such exemptive order will be obtained.

### Qualifying Assets

Under the 1940 Act, a BDC may not acquire any asset other than assets of the type listed in Section 55(a) of the 1940 Act, which are referred to as qualifying assets, unless, at the time the acquisition is made, qualifying assets represent at least 70% of the company’s total assets. The principal categories of qualifying assets relevant to our business are any of the following:

- (1) Securities purchased in transactions not involving any public offering from the issuer of such securities, which issuer (subject to certain limited exceptions) is an eligible portfolio company, or from any person who is, or has been during the preceding 13 months, an affiliated person of an eligible portfolio company, or from any other person, subject to such rules as may be prescribed by the SEC. An eligible portfolio company is defined in the 1940 Act as any issuer which:
  - (a) is organized under the laws of, and has its principal place of business in, the United States;
  - (b) is not an investment company (other than a small business investment company wholly owned by the BDC) or a company that would be an investment company but for certain exclusions under the 1940 Act; and
  - (c) satisfies any of the following:
    - (i) does not have any class of securities that is traded on a national securities exchange;
    - (ii) has a class of securities listed on a national securities exchange, but has an aggregate market value of outstanding voting and non-voting common equity of less than \$250 million;
    - (iii) is controlled by a BDC or a group of companies including a BDC and the BDC has an affiliated person who is a director of the eligible portfolio company; or
    - (iv) is a small and solvent company having total assets of not more than \$4 million and capital and surplus of not less than \$2 million.
- (2) Securities of any eligible portfolio company that we control.

- (3) Securities purchased in a private transaction from a U.S. issuer that is not an investment company or from an affiliated person of the issuer, or in transactions incident thereto, if the issuer is in bankruptcy and subject to reorganization or if the issuer, immediately prior to the purchase of its securities was unable to meet its obligations as they came due without material assistance other than conventional lending or financing arrangements.
- (4) Securities of an eligible portfolio company purchased from any person in a private transaction if there is no ready market for such securities and we already own 60% of the outstanding equity of the eligible portfolio company.
- (5) Securities received in exchange for or distributed on or with respect to securities described in (1) through (4) above, or pursuant to the exercise of warrants or rights relating to such securities.
- (6) Cash, cash equivalents, U.S. government securities or high-quality debt securities maturing in one year or less from the time of investment.

In addition, a BDC must be operated for the purpose of making investments in the types of securities described in (1), (2) or (3) above.

Control, as defined by the 1940 Act, is presumed to exist where a BDC beneficially owns more than 25% of the outstanding voting securities of the portfolio company, but may exist in other circumstances based on the facts and circumstances.

The regulations defining qualifying assets may change over time. The Company may adjust its investment focus as needed to comply with and/or take advantage of any regulatory, legislative, administrative or judicial actions.

#### ***Managerial Assistance to Portfolio Companies***

In order to count portfolio securities as qualifying assets for the purpose of the 70% test, we must either control the issuer of the securities or must offer to make available to the issuer of the securities (other than small and solvent companies described above) significant managerial assistance; except that, where we purchase such securities in conjunction with one or more other persons acting together, one of the other persons in the group may make available such managerial assistance. Making available managerial assistance means, among other things, any arrangement whereby the BDC, through its directors, officers or employees, offers to provide, and, if accepted, does so provide, significant guidance and counsel concerning the management, operations or business objectives and policies of a portfolio company.

#### ***Temporary Investments***

Pending investment in other types of “qualifying assets,” as described above, our investments may consist of cash, cash equivalents, U.S. government securities or high-quality debt securities maturing in one year or less from the time of investment, which we refer to, collectively, as temporary investments, so that 70% of our assets are qualifying assets. Typically, we will invest in U.S. Treasury bills or in repurchase agreements, provided that such agreements are fully collateralized by cash or securities issued by the U.S. government or its agencies. A repurchase agreement (which is substantially similar to a secured loan) involves the purchase by an investor, such as us, of a specified security and the simultaneous agreement by the seller to repurchase it at an agreed-upon future date and at a price that is greater than the purchase price by an amount that reflects an agreed-upon interest rate. There is no percentage restriction on the proportion of our assets that may be invested in such repurchase agreements. However, if more than 25% of our total assets constitute repurchase agreements from a single counterparty, we would not meet the diversification tests in order to qualify as a RIC for U.S. federal income tax purposes. Thus, we do not intend to enter into repurchase agreements with a single counterparty in excess of this limit. Our Adviser will monitor the creditworthiness of the counterparties with which we enter into repurchase agreement transactions.

#### ***Senior Securities***

We are permitted, under specified conditions, to issue multiple classes of debt and one class of stock senior to our common stock if our asset coverage, as defined in the 1940 Act, is at least equal to 150% immediately after each such issuance. Under a 150% asset coverage ratio a BDC may borrow \$2 for investment purposes of every \$1 of investor equity. We are currently targeting a debt-to-equity ratio of 0.50x (i.e., we aim to have one dollar of equity for each \$0.50 of debt outstanding).

In addition, while any senior securities remain outstanding, we may be prohibited from making distributions to our stockholders or repurchasing such securities or shares unless we meet the applicable asset coverage ratios at the time of the distribution or repurchase. We may also borrow amounts up to 5% of the value of our total assets for temporary or emergency purposes without regard to asset coverage. For a discussion of the risks associated with leverage, see “Risk Factors — Risks Relating to Our Business and Structure — Regulations that will govern our operation as a BDC and RIC may affect our ability to raise, and the way in which we raise, additional capital or borrow for investment purposes, which may have a negative effect on our growth” and “Risk Factors — Risks Relating to Our Use of Leverage and Credit Facilities — If we borrow money, the potential for loss on amounts invested in us will be magnified and may increase the risk of investing in us.”

### ***Exclusion from CFTC Regulation***

CFTC Rule 4.5 permits investment advisers to BDCs to claim an exclusion from the definition of “commodity pool operator” under the Commodity Exchange Act (the “CEA”) with respect to a fund, provided certain requirements are met. In order to permit our Adviser to claim this exclusion with respect to us, we must limit our transactions in certain futures, options on futures and swaps deemed “commodity interests” under CFTC rules (excluding transactions entered into for “bona fide hedging purposes,” as defined under CFTC regulations) such that either: (i) the aggregate initial margin and premiums required to establish such futures, options on futures and swaps do not exceed 5% of the liquidation value of our portfolio, after taking into account unrealized profits and losses on such positions; or (ii) the aggregate net notional value of such futures, options on futures and swaps does not exceed 100% of the liquidation value of our portfolio, after taking into account unrealized profits and losses on such positions. In addition to meeting one of the foregoing trading limitations, we may not market ourself as a commodity pool or otherwise as a vehicle for trading in the futures, options or swaps markets. Accordingly, we are not subject to regulation under the CEA or otherwise regulated by the CFTC. If the Adviser was unable to claim the exclusion with respect to us, the Adviser would become subject to registration and regulation as a commodity pool operator, which would subject the Adviser and us to additional registration and regulatory requirements and increased operating expenses.

### ***Common Stock***

We will not generally be able to issue and sell our common stock at a price below NAV per share. We will, however, be able to sell our common stock, warrants, options or rights to acquire our common stock, at a price below the current NAV of the common stock if our Board of Directors determines that such sale is in our best interests and that of our stockholders, and our stockholders approve such sale. In any such case, the price at which our securities are to be issued and sold may not be less than a price which, in the determination of our Board of Directors, closely approximates the market value of such securities (less any distributing commission or discount). We may also make rights offerings to our stockholders at prices per share less than the NAV per share, subject to applicable requirements of the 1940 Act. See “Risk Factors — Risks Relating to Our Business and Structure — Regulations that will govern our operation as a BDC and RIC may affect our ability to raise, and the way in which we raise, additional capital or borrow for investment purposes, which may have a negative effect on our growth.”

### ***Code of Ethics***

We have adopted a code of ethics pursuant to Rule 17j-1 under the 1940 Act and we have also approved the Adviser’s code of ethics that was adopted by it under Rule 17j-1 under the 1940 Act and Rule 204A-1 of the Advisers Act. These codes establish procedures for personal investments and restrict certain personal securities transactions. Personnel subject to the code may invest in securities for their personal investment accounts, including securities that may be purchased or held by us, so long as such investments are made in accordance with the code’s requirements. The codes of ethics are available on the EDGAR Database on the SEC’s Internet site at [www.sec.gov](http://www.sec.gov) and are available at our corporate governance webpage at [ssic.silverspikecap.com](http://ssic.silverspikecap.com).

### ***Compliance Policies and Procedures***

We and our Adviser have adopted and implemented written policies and procedures reasonably designed to prevent violation of the federal securities laws and are required to review these compliance policies and procedures annually for their adequacy and the effectiveness of their implementation. Our CCO is responsible for administering these policies and procedures.

### ***Proxy Voting Policies and Procedures***

We have delegated our proxy voting responsibility to our Adviser. The proxy voting policies and procedures of our Adviser are set forth below. The guidelines are reviewed periodically by our Adviser and our non-interested directors, and, accordingly, are subject to change.

#### ***Introduction***

As an investment adviser registered under the Advisers Act, our Adviser has a fiduciary duty to act solely in the best interests of its clients. As part of this duty, our Adviser recognizes that it must vote client securities in a timely manner free of conflicts of interest and in the best interests of its clients.

These policies and procedures for voting proxies for the investment advisory clients of our Adviser are intended to comply with Section 206 of, and Rule 206(4)-6 under, the Advisers Act.



### *Proxy policies*

Our Adviser will vote proxies relating to our portfolio securities in the best interest of our stockholders. Our Adviser will review on a case-by-case basis each proposal submitted for a stockholder vote to determine its impact on the portfolio securities held by us. Although our Adviser will generally vote against proposals that may have a negative impact on our portfolio securities, it may vote for such a proposal if there exists compelling long-term reasons to do so.

The proxy voting decisions of our Adviser will be made by the officers who are responsible for monitoring each of our investments. To ensure that its vote is not the product of a conflict of interest, our Adviser will require that: (a) anyone involved in the decision-making process disclose to our Adviser's CCO any potential conflict that he or she is aware of and any contact that he or she has had with any interested party regarding a proxy vote; and (b) employees involved in the decision-making process or vote administration are prohibited from revealing how our Adviser intends to vote on a proposal in order to reduce any attempted influence from interested parties.

### *Proxy voting records*

You may obtain information, without charge, regarding how we voted proxies with respect to our portfolio securities by making a written request for proxy voting information to: Chief Compliance Officer, Silver Spike Investment Corp., 660 Madison Avenue, Suite 1600, New York, NY 10065.

### **Other**

We will be subject to periodic examination by the SEC for compliance with the 1940 Act.

None of our investment policies are fundamental, and thus may be changed without stockholder approval.

We will be required to provide and maintain a bond issued by a reputable fidelity insurance company to protect us against larceny and embezzlement. Furthermore, as a BDC, we will be prohibited from protecting any director or officer against any liability to us or our stockholders arising from willful misfeasance, bad faith, gross negligence or reckless disregard of the duties involved in the conduct of such person's office.

### **Securities Exchange Act and Sarbanes-Oxley Act Compliance**

We will be subject to the reporting and disclosure requirements of the Exchange Act, including the filing of quarterly, annual and current reports, proxy statements and other required items. In addition, we will be subject to the Sarbanes-Oxley Act, which imposes a wide variety of regulatory requirements on publicly held companies and their insiders. For example:

- pursuant to Rule 13a-14 of the Exchange Act, our chief executive officer and chief financial officer will be required to certify the accuracy of the financial statements contained in our periodic reports;
- pursuant to Item 307 of Regulation S-K, our periodic reports will be required to disclose our conclusions about the effectiveness of our disclosure controls and procedures; and
- pursuant to Rule 13a-15 of the Exchange Act, our management will be required to prepare a report regarding its assessment of our internal control over financial reporting. When we are no longer an emerging growth company under the JOBS Act, our independent registered public accounting firm will be required to audit our internal control over financial reporting.

The Sarbanes-Oxley Act will require us to review our current policies and procedures to determine whether we comply with the Sarbanes-Oxley Act and the regulations promulgated thereunder. We intend to monitor our compliance with all regulations that are adopted under the Sarbanes-Oxley Act and will take actions necessary to ensure that we are in compliance therewith.

### **The Nasdaq Stock Market Corporate Governance Regulations**

The Nasdaq Stock Market has adopted corporate governance regulations that listed companies must comply with. We are in compliance with such corporate governance regulations applicable to BDCs.

## UNDERWRITING

We are offering the shares of our common stock described in this prospectus through the underwriters named below. Stifel, Nicolaus & Company, Incorporated (“Stifel”) and Piper Sandler & Co. are the representatives of the underwriters. We will enter into an underwriting agreement with the representatives. Subject to the terms and conditions of the underwriting agreement, we expect each of the underwriters will severally agree to purchase the number of shares of common stock listed next to its name in the following table.

	<u>Underwriters</u>	<u>Number of Shares</u>
Stifel, Nicolaus & Company, Incorporated		
Piper Sandler & Co.		
Canaccord Genuity LLC		
Cantor Fitzgerald & Co.		
Total		

The underwriting agreement provides that the underwriters must buy all of the shares if they buy any of them. However, the underwriters are not required to take or pay for the shares covered by the underwriters’ over-allotment option described below.

Our common stock is offered subject to a number of conditions, including:

- receipt and acceptance of our common stock by the underwriters; and
- the underwriters’ right to reject orders in whole or in part.

We have been advised by the representatives that certain of the underwriters intend to make a market in our common stock, but that they are not obligated to do so and may discontinue making a market at any time without notice.

In connection with this offering, certain of the underwriters may distribute prospectuses electronically.

### Over-allotment Option

We have granted the underwriters an over-allotment option to buy up to an aggregate of 1,339,286 additional shares of our common stock. The underwriters may exercise this option solely for the purpose of covering over-allotments, if any, made in connection with this offering. The underwriters have 30 days from the date of this prospectus to exercise this option. If the underwriters exercise this option, they will each purchase additional shares approximately in proportion to the amounts specified in the table above.

### Commissions and Discounts

Shares sold by the underwriters to the public will initially be offered at the initial offering price set forth on the cover of this prospectus. Any shares sold by the underwriters to securities dealers may be sold at a discount of up to \$ per share from the initial public offering price. Sales of shares made outside the United States may be made by affiliates of the underwriters. If all the shares are not sold at the initial public offering price, the representatives may change the offering price and the other selling terms. Upon execution of the underwriting agreement, the underwriters will be obligated to purchase the shares at the prices and upon the terms stated therein and, as a result, will thereafter bear any risk associated with changing the offering price to the public or other selling terms. The representatives of the underwriters have informed us that they do not expect to sell more than an aggregate of five percent of the total number of shares of common stock offered by them to accounts over which such representatives exercise discretionary authority.

The following table shows the per share and total underwriting discounts and commissions we will pay to the underwriters assuming both no exercise and full exercise of the underwriters’ over-allotment option to purchase up to 1,339,286 additional shares.

	<u>No exercise</u>	<u>Full exercise</u>
Per share(1)	\$0.84	\$0.84
Total(1)	\$5,500,000	\$6,625,000

(1) A sales load (underwriting discount and commission) of 2.00% will be paid on 3,571,429 shares sold to the Adviser.

We estimate that the total expenses of this offering (including up to \$140,000 in reimbursement of certain underwriters' expenses), not including the underwriting discounts and commissions, will be approximately \$1.45 million. The underwriters have agreed to reimburse us for certain expenses incurred in connection with the offering.

We have agreed to indemnify the several underwriters against certain liabilities, including liabilities under the Securities Act.

### **Lock-up Agreements**

We, our officers and directors, and the Adviser have entered into lock-up agreements with the underwriters. Under these agreements, we and each of these persons may not, without the prior written approval of the representatives offer, sell, contract to sell, pledge or otherwise dispose of, directly or indirectly, or hedge our common stock or securities convertible into or exchangeable or exercisable for our common stock. These restrictions will be in effect for a period of 180 days after the date of this prospectus. At any time and without public notice, the representatives may, in their sole discretion, release some or all of the securities from these lock-up agreements.

### **Directed Share Program**

At our request, the underwriters have reserved up to 10% of the common stock being offered by this prospectus for sale at the initial public offering price to our directors, officers, employees and other individuals associated with us and members of their families. The sales will be made by Stifel through a directed share program. We do not know if these persons will choose to purchase all or any portion of these reserved shares, but any purchases they do make will reduce the number of shares available to the general public. Any shares sold in the directed share program to our directors or officers shall be subject to the lock-up agreements described above.

### **Listing**

Our common stock has been approved for listing on the Nasdaq Stock Market under the symbol "SSIC."

### **Price Stabilizations and Short Positions**

In connection with this offering, the underwriters may engage in activities that stabilize, maintain or otherwise affect the price of our common stock, including:

- stabilizing transactions;
- short sales;
- purchases to cover positions created by short sales;
- imposition of penalty bids; and
- syndicate covering transactions.

Stabilizing transactions consist of bids or purchases made for the purpose of preventing or retarding a decline in the market price of our common stock while this offering is in progress. These transactions may also include making short sales of our common stock, which involve the sale by the underwriters of a greater number of shares of common stock than they are required to purchase in this offering and purchasing shares of common stock on the open market to cover positions created by short sales. Short sales may be "covered short sales," which are short positions in an amount not greater than the underwriters' over-allotment option referred to above, or may be "naked short sales," which are short positions in excess of that amount.

The underwriters may close out any covered short position by either exercising their over-allotment option, in whole or in part, or by purchasing shares in the open market. In making this determination, the underwriters will consider, among other things, the price of shares available for purchase in the open market as compared to the price at which they may purchase shares through the over-allotment option.

Naked short sales are in excess of the over-allotment option. The underwriters must close out any naked short position by purchasing shares in the open market. A naked short position is more likely to be created if the underwriters are concerned that there may be downward pressure on the price of the common stock in the open market that could adversely affect investors who purchased in this offering.

The underwriters also may impose a penalty bid. This occurs when a particular underwriter repays to the underwriters a portion of the underwriting discount received by it because the representatives have repurchased shares sold by or for the account of that underwriter in stabilizing or short covering transactions.

As a result of these activities, the price of our common stock may be higher than the price that otherwise might exist in the open market. If these activities are commenced, they may be discontinued by the underwriters at any time. The underwriters may carry out these transactions on the Nasdaq Stock Market, in the over-the-counter market or otherwise.

#### **Determination of Offering Price**

Prior to this offering, there was no public market for our common stock. The initial public offering price will be determined by negotiation by us and the representatives of the underwriters.

#### **Additional Compensation to Underwriters**

Certain of the underwriters and their affiliates may from time to time in the future provide certain commercial banking, financial advisory, investment banking and other services for us in the ordinary course of their business, for which they may receive customary fees and commissions. In addition, Stifel, Piper Sandler & Co. and Canaccord Genuity LLC received customary fees and commissions for serving as placement agents and financial advisors for Silver Spike Acquisition Corp., an affiliate of the Company, and Stifel received customary fees and commissions for serving as an underwriter for Silver Spike Acquisition Corp. II, an affiliate of the Company.

**Delivery**

The underwriters may make prospectuses available in electronic format. A prospectus in electronic format may be made available on the website maintained by any of the underwriters, and underwriters may distribute such prospectuses electronically. The underwriters may agree with us to allocate a limited number of shares for sale to their online brokerage customers. Any such allocation for online distributions will be made by the underwriters on the same basis as other allocations.

The underwriters do not expect sales to discretionary accounts to exceed five percent of the total number of shares offered.

The addresses of the representatives are: Stifel, Nicolaus & Company, Incorporated, 787 7th Avenue, Eleventh Floor, New York, New York 10019; and Piper Sandler & Co., 1251 Avenue of the Americas, 6th Floor, New York, New York 10020.

**CUSTODIAN, TRANSFER AND DISTRIBUTION PAYING AGENT AND REGISTRAR**

Our portfolio securities will be held under a custody agreement by State Street Bank and Trust Company. The address of the custodian is: One Lincoln Street, Boston, MA 02111. ALPS Fund Services, Inc. will act as our transfer agent, distribution paying agent and registrar for our common stock. The principal business address of our transfer agent is 1290 Broadway, Suite 1100, Denver, CO 80203, telephone number: 303-623-2577.

## **BROKERAGE ALLOCATION AND OTHER PRACTICES**

Since we intend to generally acquire and dispose of our investments in privately negotiated transactions, we expect to infrequently use brokers in the normal course of our business. Subject to policies established by our Board of Directors, our Adviser is primarily responsible for the execution of the publicly traded securities portion of our portfolio transactions and the allocation of brokerage commissions. Our Adviser does not execute transactions through any particular broker or dealer, but seeks to obtain the best net results for us, taking into account such factors as price (including the applicable brokerage commission or dealer spread), size of order, difficulty of execution, and operational facilities of the firm and the firm's risk and skill in positioning blocks of securities. While our Adviser will generally seek reasonably competitive trade execution costs, we will not necessarily pay the lowest spread or commission available.

## LEGAL MATTERS

Certain legal matters in connection with the securities offered by this prospectus will be passed upon for us by Davis Polk & Wardwell LLP, New York, NY and Baker, Donelson, Bearman, Caldwell & Berkowitz, PC, Baltimore, MD. Certain legal matters related to the offering will be passed upon for the underwriters by Ropes & Gray LLP.



**INDEPENDENT REGISTERED PUBLIC ACCOUNTING FIRM**

The financial statements as of June 16, 2021, included in this Registration Statement, have been audited by BDO USA, LLP, an independent registered public accounting firm, as stated in its report appearing herein.

## AVAILABLE INFORMATION

We have filed with the SEC a registration statement on Form N-2, together with all amendments and related exhibits, under the Securities Act, with respect to our securities offered by this prospectus. The registration statement contains additional information about us and our securities being offered by this prospectus.

We will file with or submit to the SEC annual, quarterly and current reports, proxy statements and other information meeting the informational requirements of the Exchange Act. The SEC maintains an internet site that contains reports, proxy and information statements and other information filed electronically by us with the SEC, which are available on the SEC's website at [www.sec.gov](http://www.sec.gov). Copies of these reports, proxy and information statements and other information may be obtained, after paying a duplicating fee, by electronic request at the following e-mail address: [publicinfo@sec.gov](mailto:publicinfo@sec.gov).

## PRIVACY NOTICE

We are committed to protecting your privacy. This privacy notice explains the privacy policies of Silver Spike Investment Corp. and its affiliated companies. This notice supersedes any other privacy notice you may have received from Silver Spike Investment Corp.

We will safeguard, according to strict standards of security and confidentiality, all information we receive about you. The only information we collect from you is your name, address, number of shares you hold and your social security number. This information is used only so that we can send you annual reports and other information about us, and send you proxy statements or other information required by law.

We do not share this information with any non-affiliated third-party except as described below.

- *Authorized Employees of Our Adviser.* It is our policy that only authorized employees of our Adviser who need to know your personal information will have access to it.
- *Service Providers.* We may disclose your personal information to companies that provide services on our behalf, such as recordkeeping, processing your trades, and mailing you information. These companies are required to protect your information and use it solely for the purpose for which they received it.
- *Courts and Government Officials.* If required by law, we may disclose your personal information in accordance with a court order or at the request of government regulators. Only that information required by law, subpoena, or court order will be disclosed.

## INDEX TO FINANCIAL STATEMENTS

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## **Report of Independent Registered Public Accounting Firm**

Stockholder and Board of Directors  
Silver Spike Investment Corp.  
New York, New York

### **Opinion on the Financial Statements**

We have audited the accompanying statement of assets and liabilities of Silver Spike Investment Corp. (the “Company”) as of June 16, 2021, the related statements of operations, changes in net assets (liabilities) and cash flows for the period from January 25, 2021 (inception) through June 16, 2021, and the related notes (collectively referred to as the “financial statements”). In our opinion, the financial statements present fairly, in all material respects, the financial position of the Company as of June 16, 2021, and the results of its operations and its cash flows for the period from January 25, 2021 (inception) through June 16, 2021, in conformity with accounting principles generally accepted in the United States of America.

### **Basis for Opinion**

These financial statements are the responsibility of the Company’s management. Our responsibility is to express an opinion on the Company’s financial statements based on our audit. We are a public accounting firm registered with the Public Company Accounting Oversight Board (United States) (“PCAOB”) and are required to be independent with respect to the Company in accordance with the U.S. federal securities laws and the applicable rules and regulations of the Securities and Exchange Commission and the PCAOB.

We conducted our audit in accordance with the standards of the PCAOB. Those standards require that we plan and perform the audit to obtain reasonable assurance about whether the financial statements are free of material misstatement, whether due to error or fraud. The Company is not required to have, nor were we engaged to perform, an audit of its internal control over financial reporting. As part of our audit, we are required to obtain an understanding of internal control over financial reporting but not for the purpose of expressing an opinion on the effectiveness of the Company’s internal control over financial reporting. Accordingly, we express no such opinion.

Our audit included performing procedures to assess the risks of material misstatement of the financial statements, whether due to error or fraud, and performing procedures that respond to those risks. Such procedures included examining, on a test basis, evidence regarding the amounts and disclosures in the financial statements. Our audit also included evaluating the accounting principles used and significant estimates made by management, as well as evaluating the overall presentation of the financial statements. We believe that our audit provides a reasonable basis for our opinion.

/s/ BDO USA, LLP

We have served as the Company's auditor since 2021.

New York, New York

July 9, 2021

## Statements of Assets and Liabilities

	December 31, 2021 (Unaudited)	June 16, 2021
<b>Assets</b>		
Cash	\$ 5,400	\$ 5,400
Deferred offering costs	1,110,771	629,816
<b>Total assets</b>	<b>\$ 1,116,171</b>	<b>\$ 635,216</b>
<b>Liabilities</b>		
Accrued offering costs	\$ 772,916	\$ 523,158
Accrued organizational costs	389,882	243,790
Due to affiliate	337,855	106,658
Custody fee payable	20,000	-
<b>Total liabilities</b>	<b>1,520,653</b>	<b>873,606</b>
<b>Net Assets (Liabilities)</b>	<b>\$ (404,482)</b>	<b>\$ (238,390)</b>
<b>Net Assets (Liabilities):</b>		
Common Stock, \$.01 par value (100,000,000 shares authorized, 386 shares issued and outstanding)	\$ 4	\$ 4
Additional paid-in-capital	5,396	5,396
Accumulated losses	(409,882)	(243,790)
<b>Total Net Assets (Liabilities)</b>	<b>\$ (404,482)</b>	<b>\$ (238,390)</b>
Net asset (liability) value per share	<b>\$ (1,047.88)</b>	<b>\$ (617.59)</b>

## Statements of Operations

	<b>For the period January 25, 2021 (Inception) through December 31, 2021 (Unaudited)</b>	<b>For the period January 25, 2021 (Inception) through June 16, 2021</b>
<b>Investment income</b>	\$ -	\$ -
<b>Operating expenses</b>		
Organizational costs	389,882	243,790
Custody fees	20,000	-
<b>Total expenses</b>	<u>409,882</u>	<u>243,790</u>
<b>Net investment loss</b>	\$ (409,882)	\$ (243,790)
<b>Net decrease in net assets resulting from operations</b>	<u>\$ (409,882)</u>	<u>\$ (243,790)</u>
<b>Per common share data</b>		
Net decrease in net assets resulting from operations per share	\$ (1,061.87)	\$ (631.58)

## Statements of Changes in Net Assets (Liabilities)

	Common Stock		Additional paid-in- capital	Accumulated losses	Total Net Assets (Liabilities)
	Number of shares	Par value			
<b>Balances at January 25, 2021 (Inception)</b>	-	\$ -	\$ -	\$ -	\$ -
Net investment loss	-	-	-	(409,882)	(409,882)
Net change in unrealized gain (loss)	-	-	-	-	-
Issuance of common stock	386	4	5,396	-	5,400
Distributions declared to stockholders	-	-	-	-	-
Stock issued in connection with dividend reinvestment plan	-	-	-	-	-
<b>Balances at December 31, 2021 (Unaudited)</b>	<u>386</u>	<u>\$ 4</u>	<u>\$ 5,396</u>	<u>\$ (409,882)</u>	<u>\$ (404,482)</u>

	Common Stock		Additional paid-in- capital	Accumulated losses	Total Net Assets (Liabilities)
	Number of shares	Par value			
<b>Balances at January 25, 2021 (Inception)</b>	-	\$ -	\$ -	\$ -	\$ -
Net investment loss	-	-	-	(243,790)	(243,790)
Net change in unrealized gain (loss)	-	-	-	-	-
Issuance of common stock	386	4	5,396	-	5,400
Distributions declared to stockholders	-	-	-	-	-
Stock issued in connection with dividend reinvestment plan	-	-	-	-	-
<b>Balances at June 16, 2021</b>	<u>386</u>	<u>\$ 4</u>	<u>\$ 5,396</u>	<u>\$ (243,790)</u>	<u>\$ (238,390)</u>



## Statements of Cash Flows

	For the period January 25, 2021 (Inception) through December 31, 2021 (Unaudited)	For the period January 25, 2021 (Inception) through June 16, 2021
<b>Cash flows from operating activities</b>		
Net decrease in net assets resulting from operations	\$ (409,882)	\$ (243,790)
Adjustments to reconcile net decrease in net assets resulting from operations to net cash provided by (used in) operating activities		
Changes in operating assets and liabilities		
Deferred offering costs	(1,110,771)	(629,816)
Accrued offering costs	772,916	523,158
Accrued organizational costs	389,882	243,790
Due to affiliate	337,855	106,658
Custody fee payable	20,000	-
<b>Net cash provided by (used in) operating activities</b>	<b>-</b>	<b>-</b>
<b>Cash flows from financing activities</b>		
Proceeds from issuance of common shares	5,400	5,400
<b>Net cash provided by (used in) financing activities</b>	<b>5,400</b>	<b>5,400</b>
<b>Net increase in cash</b>	<b>5,400</b>	<b>5,400</b>
<b>Cash, Beginning of period</b>	<b>-</b>	<b>-</b>
<b>Cash, End of period</b>	<b>\$ 5,400</b>	<b>\$ 5,400</b>

## Notes to Financial Statements

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### NOTE 1 - ORGANIZATION

Silver Spike Investment Corp. (an emerging growth company) (the "Company") was formed on January 25, 2021 as a Maryland corporation structured as an externally managed, closed-end, non-diversified management investment company. The Company intends to elect to be treated as a business development company, or BDC, under the Investment Company Act of 1940, as amended, or the 1940 Act, prior to the time that shares of its common stock are sold in connection with an initial public offering. In addition, for U.S. federal income tax purposes, the Company intends to elect to be treated, and intends to qualify annually, as a regulated investment company, or RIC, under Subchapter M of the Internal Revenue Code of 1986, as amended, commencing with its first taxable year ending after completion of its initial public offering.

The Company will be managed by Silver Spike Capital, LLC ("SSC"), a registered investment advisor under the Investment Advisor Act of 1940 with the Securities and Exchange Commission. SSC has engaged SS&C Technologies, Inc and ALPS Fund Services, Inc. ("SS&C") to perform administrative services necessary for the Company to operate.

The Company's investment objective is to maximize risk-adjusted returns on equity for its shareholders. The Company will seek to drive return on equity by generating current income from its debt investments and capital appreciation from its equity and equity-related investments. The Company intends to achieve its investment objective by investing primarily in secured debt, unsecured debt, equity warrants and direct equity investments in private leveraged middle-market cannabis companies and other companies in the health and wellness sector. The debt investments will often be secured by either a first or second priority lien on the assets of the portfolio company, can include either fixed or floating rate terms and will generally have a term of between three and six years from the original investment date.

## Notes to Financial Statements (Continued)

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### NOTE 2 - SIGNIFICANT ACCOUNTING POLICIES

**Basis of Presentation:** The Company's financial statements have been prepared in accordance with accounting principles generally accepted in the United States of America ("GAAP") and Article 6 of Regulation S-X. In the opinion of management, all adjustments of a normal recurring nature considered necessary for the fair presentation of the financial statements have been made.

**Use of Estimates:** The preparation of the financial statements in conformity with GAAP requires management to make certain estimates and assumptions affecting amounts reported in the financial statements and accompanying notes. These estimates are based on the information that is currently available to the Company and on various other assumptions that the Company believes to be reasonable under the circumstances. Actual results could differ materially from those estimates under different assumptions and conditions.

**Cash:** Cash consists of demand deposits. The Company places its cash with financial institutions and, at times, cash held in bank accounts may exceed the Federal Deposit Insurance Corporation insured limit.

**Income Taxes:** As a RIC, the Company would not be subject to federal income tax on the portion of its taxable income and gains distributed currently to its stockholders as a dividend. The Company intends to distribute between 90% and 100% of its taxable income and gains, within the Subchapter M rules, and thus the Company anticipates that it will not incur any federal or state income tax at the RIC level. As a RIC, the Company would also be subject to a 4% federal excise tax based on distribution requirements of its taxable income on a calendar year basis. The Company anticipates timely distribution of its taxable income within the tax rules. However, the Company may incur a federal excise tax in future years.

**Organization Expenses and Offering Costs:**

#### *Organizational expenses*

Costs associated with the organization of the Company are expensed as incurred. These expenses consist primarily of legal fees and other costs of organizing the Company.

#### *Offering costs*

Costs associated with the offering of common shares of the Company are capitalized as deferred offering and are included in deferred offering costs in the statements of assets and liabilities. Costs will be charged to capital upon the completion of the proposed public offering. Should the proposed public offering prove to be unsuccessful, these deferred costs, as well as additional expenses to be incurred, will be charged to operations.

These costs consist primarily of legal fees and other costs incurred in connection with the Company's share offerings, the preparation of the company's registration statement, and registration fees.

As of December 31, 2021 and June 16, 2021, the Company has incurred organizational expenses of \$389,882 (unaudited) and \$243,790, respectively and offering costs of \$1,110,771 (unaudited) and \$629,819, respectively, which are accrued on the statements of assets and liabilities as of December 31, 2021 and June 16, 2021.

**New Accounting Standards:** Management does not believe any recently issued, but not yet effective, accounting standards, if currently adopted, would have a material effect on the accompanying financial statements.

## Notes to Financial Statements (Continued)

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### NOTE 3 – RELATED PARTY TRANSACTIONS

Pursuant to the expected investment advisory agreement between the Company and SSC (the "Investment Advisory Agreement"), fees payable to SSC will be equal to (a) a base management fee of 1.75% of the value of the Company's gross assets (i.e., total assets held before deduction of any liabilities), which includes investments acquired with the use of leverage and excludes cash and cash equivalents and (b) an incentive fee based on the Company's performance. The incentive fee consists of two parts. The first part is calculated and payable quarterly in arrears and equals 20% of the Company's "Pre-Incentive Fee Net Investment Income" for the quarter, subject to a preferred return, or "hurdle," of 1.75% per quarter (7% annualized), and a "catch-up" feature. The second part is determined and payable in arrears as of the end of each fiscal year (or upon termination of the Investment Advisory Agreement) and equals 20% of the Company's realized capital gains on a cumulative basis from inception through the end of the fiscal year, if any, computed net of all realized capital losses and unrealized capital depreciation on a cumulative basis, less the aggregate amount of any previously paid capital gain incentive fee.

Pursuant to the expected administration agreement between the Company and SSC (the "Administration Agreement"), SSC will be employed by the Company to arrange for the performance of the administrative services necessary for the operation of the Company, including but not limited to a maintaining and keeping all books and records.

Due to affiliate in the accompanying statements of assets and liabilities in the amount of \$337,855 (unaudited) and \$106,658 as of December 31, 2021 and June 16, 2021, respectively, are due to SSC for expenses it incurred, on our behalf, in relation to the preparation of the Company's registration statement.

SSC will be the seed investor of the Company and will provide initial funding to the Company by purchasing approximately \$50 million of the Company's common stock in the Company's initial public offering. SSC is providing this "seed capital" to the Company for the purpose of facilitating the launch and initial operation of the Company, as opposed to for long term investment purposes. Although SSC is subject to a 180-day lock-up agreement, SSC does not expect to hold the Company's common stock indefinitely, and may sell the Company's common stock at a future point in time. In order for SSC's sales of the shares of the Company not to be deemed to have been made "on the basis of" material nonpublic information, such sales may be made pursuant to a pre-approved trading plan that complies with Rule 10b5-1 under the Exchange Act and that may obligate SSC to make recurring sales of the Company's common stock on a periodic basis. Sales of substantial amounts of the Company's common stock, including by SSC or other large stockholders, or the availability of such common stock for sale, could adversely affect the prevailing market prices for the Company's common stock. If this occurs and continues for a sustained period of time, it could impair the Company's ability to raise additional capital through the sale of securities should the Company desire to do so.

SSC will hold 40% of the Company's voting stock following the Company's initial public offering (assuming no exercise of the underwriters' over-allotment option) and have the ability to exercise substantial control over all corporate actions requiring stockholder approval, including the election and removal of directors, certain amendments of the Company's charter, the Company's ability to issue its common stock at a price below NAV per share, and the approval of any merger or other extraordinary corporate action.

## Notes to Financial Statements (Continued)

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### NOTE 4 – SHARE DATA

In connection with its formation, the Company authorized 100,000,000 shares of its common stock with a par value of \$0.01 per share. SSC holds 386 common stock shares in exchange for \$5,400 as of December 31, 2021 (unaudited) and June 16, 2021.

Earnings Per Share: The following table sets forth the computation of basic and diluted loss per common share:

	<b>For the period January 25, 2021 (Inception) through December 31, 2021 (Unaudited)</b>
Decrease in net assets resulting from operations	\$ (409,882)
Weighted average shares of common stock outstanding - basic and diluted	386
Net decrease in net assets resulting from operations per share - basic and diluted	\$ (1,061.87)

	<b>For the period January 25, 2021 (Inception) through June 16, 2021</b>
Decrease in net assets resulting from operations	\$ (243,790)
Weighted average shares of common stock outstanding - basic and diluted	386
Net decrease in net assets resulting from operations per share - basic and diluted	\$ (631.58)

### NOTE 5 – INDEMNIFICATION

Under the Company's organizational documents, the Company's officers and directors are indemnified against certain liabilities arising out of the performance of their duties to the Company. In addition, in the normal course of business the Company enters into contracts that contain a variety of representations which provide general indemnifications. The Company's maximum exposure under these agreements cannot be known; however, the Company expects any risk of loss to be remote.

### NOTE 6 – SUBSEQUENT EVENTS

The Company's management evaluated subsequent events through the date of issuance of the financial statements and has determined there have been no subsequent events that occurred during such period that would require disclosure in, or would be required to be recognized in, the financial statements as of January 3, 2022.

# **Silver Spike Investment Corp.**

**8,928,572 Shares**

**Common Stock**

## **PRELIMINARY PROSPECTUS**

**Stifel**

**Piper Sandler**

**Canaccord Genuity**

**Cantor**

Through and including \_\_\_\_\_, 2022 (the 25th day after the date of this prospectus), all dealers effecting transactions in these securities, whether or not participating in this offering, may be required to deliver a prospectus. This is in addition to a dealer's obligation to deliver a prospectus when acting as an underwriter and with respect to an unsold allotment or subscription.

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PART C

Other Information

**Item 25. Financial Statements and Exhibits**

(1) *Financial Statements*

The following financial statements of Silver Spike Investment Corp. (the “Registrant” or the “Company”) are included in Part A of this Registration Statement:

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Report of Independent Registered Public Accounting Firm	F-2
<b>Financial Statements:</b>	
Statements of Assets and Liabilities as of December 31, 2021 (Unaudited) and June 16, 2021	F-3
Statements of Operations for the period from January 25, 2021 (inception) through December 31, 2021 (Unaudited) and for the period from January 25, 2021 (inception) through June 16, 2021	F-4
Statements of Changes in Net Assets for the period from January 25, 2021 (inception) through December 31, 2021 (Unaudited) and for the period from January 25, 2021 (inception) through June 16, 2021	F-5
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(2) *Exhibits*

- a.1. [Articles of Incorporation of the Registrant\\*](#)
- a.2. [Articles of Amendment and Restatement of the Registrant\\*](#)
- b. [Form of Amended and Restated Bylaws of the Registrant](#)
- e. [Dividend Reinvestment Plan\\*](#)
- g. [Form of Investment Advisory Agreement by and between Registrant and Silver Spike Capital, LLC\\*](#)
- h. [Form of Underwriting Agreement](#)
- j. [Custody Agreement\\*](#)
- k.1 [Form of Administration Agreement by and between Registrant and Silver Spike Capital, LLC\\*](#)
- k.2 [Form of License Agreement by and between Registrant and Silver Spike Capital, LLC\\*](#)
- k.3 [Form of Incentive Fee Waiver Agreement\\*](#)
- k.4 [Services Agreement\\*](#)
- l. [Opinion of Baker, Donelson, Bearman, Caldwell & Berkowitz, PC](#)
- n.1 [Consent of Baker, Donelson, Bearman, Caldwell & Berkowitz, PC \(Incorporated by reference to exhibit l hereto\)](#)
- n.2 [Opinion and consent of Dentons US LLP](#)
- n.3 [Consent of Independent Registered Public Accounting Firm](#)
- p. [Subscription Agreement\\*](#)
- r.1 [Code of Ethics of Registrant\\*](#)
- r.2 [Code of Ethics of Silver Spike Capital, LLC\\*](#)
- s.1 [Powers of Attorney for Scott Gordon, Gregory Gentile, Vivek Buntly Bohra, Michael W. Chorske and Tracey Brophy Warson\\*](#)
- s.2 [Power of Attorney for Americo Da Corte\\*](#)

\* Previously filed.

**Item 26. Marketing Arrangements**

The information contained under the heading “Underwriting” on this Registration Statement is incorporated herein by reference.

**Item 27. Other Expenses of Issuance and Distribution**

SEC registration fee	\$	18,820
Nasdaq Stock Market listing fee	\$	150,000
FINRA filing fee	\$	26,375
Accounting fees and expenses	\$	22,200
Legal fees and expenses	\$	1,157,947
Printing and engraving	\$	20,000
Miscellaneous	\$	54,658
Total	\$	1,450,000

The amounts set forth above, except for the SEC, Nasdaq and FINRA fees, are in each case estimated.

**Item 28. Persons Controlled By or Under Common Control**

Immediately prior to this offering, Silver Spike Capital, LLC will own 100% of the Company's outstanding common stock. Immediately following the completion of this offering, Silver Spike Capital, LLC's share ownership is expected to represent approximately 40% of the Company's outstanding common stock.

See "Control Persons and Principal Stockholders" in the Prospectus contained herein.

**Item 29. Number of Holders of Securities**

The following table sets forth the number of record holders of the Registrant's capital stock at January 3, 2022.

<b>Title of Class</b>	<b>Number of Record Holders</b>
Common stock, \$0.01 par value	1

**Item 30. Indemnification**

Maryland law permits a Maryland corporation to include in its charter a provision eliminating the liability of its directors and officers to the corporation and its stockholders for money damages except for liability resulting from (a) actual receipt of an improper benefit or profit in money, property or services or (b) active and deliberate dishonesty established by a final judgment and that is material to the cause of action. Our charter contains such a provision that eliminates directors' and officers' liability to the maximum extent permitted by Maryland law, subject to the requirements of the 1940 Act.

Maryland law requires a corporation (unless its charter provides otherwise, which our charter does not) to indemnify a director or officer who has been successful, on the merits or otherwise, in the defense of any proceeding to which he or she is made, or threatened to be made, a party by reason of his or her service in that capacity. Maryland law permits a corporation to indemnify its present and former directors and officers, among others, against judgments, penalties, fines, settlements and reasonable expenses actually incurred by them in connection with any proceeding to which they may be made, or threatened to be made, a party by reason of their service in those or other capacities unless it is established that (a) the act or omission of the director or officer was material to the matter giving rise to the proceeding and (1) was committed in bad faith or (2) was the result of active and deliberate dishonesty, (b) the director or officer actually received an improper personal benefit in money, property or services or (c) in the case of any criminal proceeding, the director or officer had reasonable cause to believe that the act or omission was unlawful. Under Maryland law, a Maryland corporation may not indemnify a director or officer in a suit by the corporation or in its right in which the director or officer was adjudged liable to the corporation or in a suit in which the director or officer was adjudged liable on the basis that a personal benefit was improperly received. Nevertheless, a court may order indemnification if it determines that the director or officer is fairly and reasonably entitled to indemnification, even though the director or officer did not meet the prescribed standard of conduct or was adjudged liable on the basis that personal benefit was improperly received. However, indemnification for an



adverse judgment in a suit by the corporation or in its right, or for a judgment of liability on the basis that a personal benefit was improperly received, is limited to expenses. In addition, Maryland law permits a corporation to advance reasonable expenses to a director or officer in advance of final disposition of a proceeding upon the corporation's receipt of (a) a written affirmation by the director or officer of his or her good faith belief that he or she has met the standard of conduct necessary for indemnification by the corporation and (b) a written undertaking by him or her or on his or her behalf to repay the amount paid or reimbursed by the corporation if it is ultimately determined that the standard of conduct was not met.

Our charter obligates us, to the maximum extent permitted by Maryland law and subject to the requirements of the 1940 Act, to indemnify any present or former director or officer or any individual who, while a director or officer and at our request, serves or has served another corporation, partnership, joint venture, trust, limited liability company, employee benefit plan or other enterprise as a director, officer, partner, trustee, employee, or agent, who is made, or threatened to be made, a party to, or witness in, a proceeding by reason of his or her service in such capacity from and against any claim or liability to which that person may become subject or which that person may incur by reason of his or her status as such, and to pay or reimburse their reasonable expenses in advance of final disposition of a proceeding. Our bylaws permit us to indemnify and advance expenses to employees and agents who are not officers or directors to the extent permissible under the MGCL and the 1940 Act and as may be determined by our Board of Directors. In accordance with the 1940 Act, we will not indemnify any person for any liability to which such person would be subject by reason of such person's willful misfeasance, bad faith, gross negligence or reckless disregard of the duties involved in the conduct of his or her office.

The Investment Advisory Agreement provides that, absent willful misfeasance, bad faith or gross negligence in the performance of its duties or by reason of the reckless disregard of its duties and obligations, Silver Spike Capital, LLC ("SSC") and its officers, managers, partners, members (and their members, including the owners of their members), agents, employees, controlling persons and any other person or entity affiliated with it are entitled to indemnification from us for any damages, liabilities, costs and expenses (including reasonable attorneys' fees and amounts reasonably paid in settlement) arising from the rendering of the Adviser's services under the Investment Advisory Agreement or otherwise as our investment adviser.

The Administration Agreement provides that, absent willful misfeasance, bad faith or gross negligence in the performance of its duties or by reason of the reckless disregard of its duties and obligations, SSC and its officers, managers, partners, members (and their members, including the owners of their members), agents, employees, controlling persons and any other person or entity affiliated with it are entitled to indemnification from us for any damages, liabilities, costs and expenses (including reasonable attorneys' fees and amounts reasonably paid in settlement) arising from the rendering of its services under the Administration Agreement or otherwise as our administrator.

Insofar as indemnification for liability arising under the Securities Act may be permitted to directors, officers and controlling persons of us pursuant to the foregoing provisions, or otherwise, we have been advised that in the opinion of the SEC such indemnification is against public policy as expressed in the Securities Act and is, therefore, unenforceable. In the event that a claim for indemnification against such liabilities (other than the payment by us of expenses incurred or paid by a director, officer or controlling person of us in the successful defense of any action, suit or proceeding) is asserted by such director, officer or controlling person in connection with the securities being registered, we will, unless in the opinion of its counsel the matter has been settled by controlling precedent, submit to a court of appropriate jurisdiction the question whether such indemnification by it is against public policy as expressed in the Securities Act and will be governed by the final adjudication of such issue.

We have entered into indemnification agreements with our directors. The indemnification agreements are intended to provide our directors the maximum indemnification permitted under Maryland law and the 1940 Act. Each indemnification agreement provides that we shall indemnify the director who is a party to the agreement (an "Indemnitee"), including the advancement of legal expenses, if, by reason of his or her corporate status, the Indemnitee is, or is threatened to be, made a party to or a witness in any threatened, pending, or completed proceeding, to the maximum extent permitted by Maryland law and the 1940 Act.

**Item 31. Business and Other Connections of Investment Adviser**

A description of any other business, profession, vocation, or employment of a substantial nature in which the Registrant's investment adviser, and each executive officer of the investment adviser, is or has been during the past two fiscal years, engaged in for his or her own account or in the capacity of director, officer, employee, partner or trustee, is set forth in Part A of this Registration Statement in the sections entitled "Business — The Investment Adviser," "Management — Board of Directors and Executive Officers — Directors," "— Executive Officers," "Portfolio Management" and "Investment Advisory Agreement." Additional information regarding our investment adviser and its officers is set forth in its Form ADV, as filed with the Securities and Exchange Commission (SEC File No. 801-120486), and is incorporated herein by reference.

**Item 32. Location of Accounts and Records**

All accounts, books and other documents required to be maintained by Section 31(a) of the 1940 Act, and the rules thereunder are maintained at the offices of:

- (1) the Registrant, Silver Spike Investment Corp., 660 Madison Avenue, Suite 1600, New York, NY 10065;
- (2) the Transfer Agent, ALPS Fund Services, Inc., 1290 Broadway, Suite 1100, Denver, CO 80203;
- (3) the Custodian, State Street Bank and Trust Company, One Lincoln Street, Boston, MA 02111;
- (4) the investment adviser and administrator, Silver Spike Capital, LLC, 660 Madison Avenue, Suite 1600, New York, NY 10065; and
- (5) the sub-administrator, SS&C Technologies, Inc., 50 Milk Street, Boston, MA 02110.

**Item 33. Management Services**

Not Applicable.

**Item 34. Undertakings**

(1) Registrant undertakes to suspend the offering of the shares of common stock covered hereby until it amends its prospectus contained herein if (a) subsequent to the effective date of this Registration Statement, its NAV per share of common stock declines more than 10% from its NAV per share of common stock as of the effective date of this Registration Statement, or (b) its NAV per share of common stock increases to an amount greater than its net proceeds as stated in the prospectus contained herein.

(2) Not applicable.

(3) Not applicable.

(4) Registrant undertakes:

(a) For purposes of determining any liability under the Securities Act, the information omitted from the form of prospectus filed as part of the Registration Statement in reliance upon Rule 430A and contained in the form of prospectus filed by the Registrant pursuant to Rule 424(b)(1) under the Securities Act shall be deemed to be part of this Registration Statement as of the time it was declared effective.

(b) For purposes of determining any liability under the Securities Act, each post-effective amendment that contains a form of prospectus shall be deemed to be a new registration statement relating to the securities at that time and shall be deemed to be the initial bona fide offering thereof.

(5) Not applicable.

(6) Not applicable.

(7) We hereby undertake to send by first class mail or other means designed to ensure equally prompt delivery, within two business days of receipt of a written or oral request, any prospectus.

## SIGNATURES

Pursuant to the requirements of the Securities Act of 1933, the Registrant has duly caused this Pre-Effective Amendment No. 4 to the Registration Statement on Form N-2 to be signed on its behalf by the undersigned, thereunto duly authorized, in the City of New York, State of New York, on January 3, 2022.

SILVER SPIKE INVESTMENT CORP.

By: /s/ Scott Gordon  
Name: Scott Gordon  
Title: Chief Executive Officer

Pursuant to the requirements of the Securities Act of 1933, this Pre-Effective Amendment No. 4 to the Registration Statement on Form N-2 has been signed below by the following persons in the capacities and on the dates indicated:

Signature	Title	Date
<u>/s/ Scott Gordon</u> Scott Gordon	Chief Executive Officer (Principal Executive Officer) and Chairman of the Board	January 3, 2022
<u>/s/ Gregory Gentile</u> Gregory Gentile	Chief Financial Officer (Principal Financial and Accounting Officer)	January 3, 2022
<u>/s/ Vivek Buntly Bohra*</u> Vivek Buntly Bohra	Director	January 3, 2022
<u>/s/ Michael W. Chorske*</u> Michael W. Chorske	Director	January 3, 2022
<u>/s/ Americo Da Corte*</u> Americo Da Corte	Director	January 3, 2022
<u>/s/ Tracey Brophy Warson*</u> Tracey Brophy Warson	Director	January 3, 2022

\*By: /s/ Gregory Gentile  
Gregory Gentile  
\*\*Attorney-in-Fact

\*\* Signed by Gregory Gentile pursuant to powers of attorney signed by each individual and filed with this Registration Statement on July 12, 2021 and December 3, 2021.

**SILVER SPIKE INVESTMENT CORP.****AMENDED AND RESTATED BYLAWS****ARTICLE I****OFFICES**

Section 1. PRINCIPAL OFFICE. The principal office of Silver Spike Investment Corp. (the "Corporation") in the State of Maryland shall be located at such place as the Board of Directors may designate.

Section 2. ADDITIONAL OFFICES. The Corporation may have additional offices, including a principal executive office, at such places as the Board of Directors may from time to time determine or the business of the Corporation may require.

**ARTICLE II****MEETINGS OF STOCKHOLDERS**

Section 1. PLACE. All meetings of stockholders shall be held at the principal executive office of the Corporation or at such other place as shall be set by the Board of Directors or otherwise in accordance with these Bylaws and stated in the notice of the meeting. The Board of Directors may determine that any meeting of stockholders not be held at any place, but instead be held solely by means of remote communication. Any reference in these Bylaws to place shall be deemed to include the means of remote communication, as applicable.

Section 2. ANNUAL MEETING. An annual meeting of stockholders for the election of directors and the transaction of any business within the powers of the Corporation shall be held on the date and at the time and place set by the Board of Directors.

Section 3. SPECIAL MEETINGS.

(a) General. The chairman of the board, the chief executive officer, the president or the Board of Directors may call a special meeting of the stockholders. Except as provided in subsection (b)(4) of this Section 3, a special meeting of stockholders shall be held on the date and at the time and place set by the chairman of the board, chief executive officer, president or Board of Directors, whoever has called the meeting. Subject to subsection (b) of this Section 3, a special meeting of stockholders shall also be called by the secretary of the Corporation to act on any matter that may properly be considered at a meeting of stockholders upon the written request of stockholders entitled to cast not less than a majority of all the votes entitled to be cast on such matter at such meeting.

(b) Stockholder-Requested Special Meetings. (1) Any stockholder of record seeking to have stockholders request a special meeting shall, by sending written notice to the

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secretary (the "Record Date Request Notice") by registered mail, return receipt requested, request the Board of Directors to fix a record date to determine the stockholders entitled to request a special meeting (the "Request Record Date"). The Record Date Request Notice shall set forth the purpose of the meeting and the matters proposed to be acted on at it, shall be signed by one or more stockholders of record as of the date of signature (or their agents duly authorized in a writing accompanying the Record Date Request Notice), shall bear the date of signature of each such stockholder (or such agent) and shall set forth all information relating to each such stockholder and each matter proposed to be acted on at the meeting that would be required to be disclosed in connection with the solicitation of proxies for the election of directors in an election contest (even if an election contest is not involved), or would otherwise be required in connection with such a solicitation, in each case pursuant to Regulation 14A (or any successor provision) under the Securities Exchange Act of 1934, as amended, and the rules, regulations, and guidance of the Securities and Exchange Commission and its staff thereunder (the "Exchange Act"). Upon receiving the Record Date Request Notice, the Board of Directors may fix a Request Record Date. The Request Record Date shall not precede and shall not be more than ten days after the close of business on the date on which the resolution fixing the Request Record Date is adopted by the Board of Directors. If the Board of Directors, within ten days after the date on which a valid Record Date Request Notice is received, fails to adopt a resolution fixing the Request Record Date, the Request Record Date shall be the close of business on the tenth day after the first date on which a Record Date Request Notice is received by the secretary.

(2) In order for any stockholder to request a special meeting to act on any matter that may properly be considered at a meeting of stockholders, one or more written requests for a special meeting (collectively, the "Special Meeting Request") signed by stockholders of record (or their agents duly authorized in a writing accompanying the request) as of the Request Record Date entitled to cast not less than a majority of all of the votes entitled to be cast on such matter at such meeting (the "Special Meeting Percentage") shall be delivered to the secretary. In addition, the Special Meeting Request shall (a) set forth the purpose of the meeting and the matters proposed to be acted on at it (which shall be limited to those lawful matters set forth in the Record Date Request Notice received by the secretary), (b) bear the date of signature of each such stockholder (or such agent) signing the Special Meeting Request, (c) set forth (i) the name and address, as they appear in the Corporation's books, of each stockholder signing such request (or on whose behalf the Special Meeting Request is signed), (ii) the class, series and number of all shares of stock of the Corporation which are owned (beneficially or of record) by each such stockholder and (iii) the nominee holder for, and number of, shares of stock of the Corporation owned beneficially but not of record by such stockholder, (d) be sent to the secretary by registered mail, return receipt requested, and (e) be received by the secretary within 60 days after the Request Record Date. Any requesting stockholder (or agent duly authorized in a writing accompanying the revocation of the Special Meeting Request) may revoke his, her or its request for a special meeting at any time by written revocation delivered to the secretary.

(3) The secretary shall inform the requesting stockholders of the reasonably estimated cost of preparing and mailing or delivering the notice of the meeting (including the Corporation's proxy materials). The secretary shall not be required to call a special

meeting upon stockholder request and such meeting shall not be held unless, in addition to the documents required by paragraph (2) of this Section 3(b), the secretary receives payment of such reasonably estimated cost prior to the preparation and mailing or delivery of such notice of the meeting.

(4) In the case of any special meeting called by the secretary upon the request of stockholders (a “Stockholder-Requested Meeting”), such meeting shall be held at such place, date and time as may be designated by the Board of Directors; *provided*, however, that the date of any Stockholder-Requested Meeting shall be not more than 90 days after the record date for such meeting (the “Meeting Record Date”); and *provided further* that if the Board of Directors fails to designate, within ten days after the date that a valid Special Meeting Request is actually received by the secretary (the “Delivery Date”), a date and time for a Stockholder-Requested Meeting, then such meeting shall be held at 2:00 p.m., local time, on the 90<sup>th</sup> day after the Meeting Record Date or, if such 90<sup>th</sup> day is not a Business Day (as defined below), on the first preceding Business Day; and *provided further* that in the event that the Board of Directors fails to designate a place for a Stockholder-Requested Meeting within ten days after the Delivery Date, then such meeting shall be held at the principal executive office of the Corporation. In fixing a date for a Stockholder-Requested Meeting, the Board of Directors may consider such factors as it deems relevant, including, without limitation, the nature of the matters to be considered, the facts and circumstances surrounding any request for the meeting and any plan of the Board of Directors to call an annual meeting or a special meeting. In the case of any Stockholder-Requested Meeting, if the Board of Directors fails to fix a Meeting Record Date that is a date within 30 days after the Delivery Date, then the close of business on the 30<sup>th</sup> day after the Delivery Date shall be the Meeting Record Date. The Board of Directors may revoke the notice for any Stockholder-Requested Meeting in the event that the requesting stockholders fail to comply with the provisions of paragraph (3) of this Section 3(b).

(5) If written revocations of the Special Meeting Request have been delivered to the secretary and the result is that stockholders of record (or their agents duly authorized in writing), as of the Request Record Date, entitled to cast less than the Special Meeting Percentage have delivered, and not revoked, requests for a special meeting on the matter to the secretary: (i) if the notice of meeting has not already been delivered, the secretary shall refrain from delivering the notice of the meeting and send to all requesting stockholders who have not revoked such requests written notice of any revocation of a request for a special meeting on the matter, or (ii) if the notice of meeting has been delivered and if the secretary first sends to all requesting stockholders who have not revoked requests for a special meeting on the matter written notice of any revocation of a request for the special meeting and written notice of the Corporation’s intention to revoke the notice of the meeting or for the chairman of the meeting to adjourn the meeting without action on the matter, (A) the secretary may revoke the notice of the meeting at any time before ten days before the commencement of the meeting or (B) the chairman of the meeting may call the meeting to order and adjourn the meeting from time to time without acting on the matter. Any request for a special meeting received after a revocation by the secretary of a notice of a meeting shall be considered a request for a new special meeting.

(6) The chairman of the board, chief executive officer, president or Board of Directors may appoint independent inspectors of elections to act as the agent of the Corporation for the purpose of promptly performing a ministerial review of the validity of any purported Special Meeting Request received by the secretary. For the purpose of permitting the inspectors to perform such review, no such purported Special Meeting Request shall be deemed to have been received by the secretary until the earlier of (i) five Business Days after actual receipt by the secretary of such purported request and (ii) such date as the independent inspectors certify to the Corporation that the valid requests received by the secretary represent, as of the Request Record Date, stockholders of record entitled to cast not less than the Special Meeting Percentage. Nothing contained in this paragraph (6) shall in any way be construed to suggest or imply that the Corporation or any stockholder shall not be entitled to contest the validity of any request, whether during or after such five Business Day period, or to take any other action (including, without limitation, the commencement, prosecution or defense of any litigation with respect thereto, and the seeking of injunctive relief in such litigation).

(7) For purposes of these Bylaws, "Business Day" shall mean any day other than a Saturday, a Sunday or a day on which banking institutions in the State of New York are authorized or obligated by law or executive order to close.

Section 4. NOTICE OF MEETINGS. Not less than ten nor more than 90 days before each meeting of stockholders, the secretary shall give to each stockholder entitled to vote at such meeting and to each stockholder not entitled to vote who is entitled to notice of the meeting notice in writing or by electronic transmission stating the time and place of the meeting and, in the case of a special meeting or as otherwise may be required by any statute, the purpose for which the meeting is called, by mail, by presenting it to such stockholder personally, by leaving it at the stockholder's residence or usual place of business, by electronic transmission or by any other means permitted by Maryland law. If mailed, such notice shall be deemed to be given when deposited in the United States mail addressed to the stockholder at the stockholder's address as it appears on the records of the Corporation, with postage thereon prepaid. If transmitted electronically, such notice shall be deemed to be given when transmitted to the stockholder by an electronic transmission to any address or number of the stockholder at which the stockholder receives electronic transmissions. The Corporation may give a single notice to all stockholders who share an address, which single notice shall be effective as to any stockholder at such address, unless such stockholder objects to receiving such single notice or revokes a prior consent to receiving such single notice. Failure to give notice of any meeting to one or more stockholders, or any irregularity in such notice, shall not affect the validity of any meeting fixed in accordance with this Article II or the validity of any proceedings at any such meeting.

Subject to Section 11(a) of this Article II, any business of the Corporation may be transacted at an annual meeting of stockholders without being specifically designated in the notice, except such business as is required by any statute to be stated in such notice. No business shall be transacted at a special meeting of stockholders except as specifically designated in the notice. The Corporation may postpone or cancel a meeting of stockholders by making a public announcement (as defined in Section 11(c)(3) of this Article II) of such postponement or cancellation prior to the

meeting. Notice of the date, time and place to which the meeting is postponed shall be given not less than ten days prior to such date and otherwise in the manner set forth in this section.

Section 5. ORGANIZATION AND CONDUCT. Every meeting of stockholders shall be conducted by the chairman of the board and/or one or more other directors appointed by the Board of Directors to be chairman of the meeting or, in the absence of the chairman of the board or such appointment, by one of the following officers present at the meeting in the following order: the vice chairman of the board, if there is one, the chief executive officer, the president, the vice presidents in their order of rank and, within each rank, in their order of seniority, the secretary, or, in the absence of such officers, a chairman chosen by the stockholders by the vote of a majority of the votes cast by stockholders present in person or by proxy. The secretary or, in the case of a vacancy in the office or absence of the secretary, an assistant secretary or, in the absence of both the secretary and assistant secretaries, an individual appointed by the Board of Directors or, in the absence of such appointment, an individual appointed by the chairman of the meeting shall act as secretary. In the event that the secretary presides at a meeting of stockholders, an assistant secretary, or, in the absence of all assistant secretaries, an individual appointed by the Board of Directors or the chairman of the meeting, shall record the minutes of the meeting. The order of business and all other matters of procedure at any meeting of stockholders shall be determined by the chairman of the meeting. The chairman of the meeting may prescribe such rules, regulations and procedures and take such action as, in the discretion of the chairman of the meeting and without any action by the stockholders, are appropriate for the proper conduct of the meeting, including, without limitation, (a) restricting admission to the time set for the commencement of the meeting; (b) limiting attendance or participation at the meeting to stockholders of record of the Corporation, their duly authorized proxies and such other individuals as the chairman of the meeting may determine; (c) limiting participation at the meeting on any matter to stockholders of record of the Corporation entitled to vote on such matter, their duly authorized proxies or other such individuals as the chairman of the meeting may determine; (d) limiting the time allotted to questions or comments; (e) determining when and for how long the polls should be opened and when the polls should be closed and when announcement of the results should be made; (f) maintaining order and security at the meeting; (g) removing any stockholder or any other individual who refuses to comply with meeting procedures, rules or guidelines as set forth by the chairman of the meeting; (h) concluding a meeting or recessing or adjourning the meeting, whether or not a quorum is present, to a later date and time and at a place announced at the meeting; and (i) complying with any state and local laws and regulations concerning safety and security. Unless otherwise determined by the chairman of the meeting, meetings of stockholders shall not be required to be held in accordance with any rules of parliamentary procedure.

Section 6. QUORUM. The presence in person or by proxy of the holders of shares of stock of the Corporation entitled to cast a majority of the votes entitled to be cast (without regard to class or series) shall constitute a quorum at any meeting of stockholders, except with respect to any such matter that, under applicable statutes or regulatory requirements or the charter of the Corporation, requires approval by a separate vote of one or more classes or series of stock, in which case the presence in person or by proxy of the holders of shares entitled to cast a majority of the votes entitled to be cast by each such class or series on a matter shall constitute a quorum.



This section shall not affect any requirement under any statute, the charter of the Corporation or these Bylaws for the vote necessary for the approval of any matter.

If, however, such quorum is not established at any meeting of the stockholders, the chairman of the meeting may adjourn the meeting from time to time to a date not more than 120 days after the original record date without notice other than announcement at the meeting. If a meeting is adjourned and a quorum is present at such adjournment, any business may be transacted which might have been transacted at the reconvened meeting as originally notified.

The stockholders present either in person or by proxy, at a meeting which has been duly called and at which a quorum has been established, may continue to transact business until adjournment, notwithstanding the withdrawal from the meeting of enough stockholders to leave fewer than would be required to establish a quorum.

Section 7. VOTING. Except for a contested election (as defined below), a plurality of all the votes cast at a meeting of stockholders duly called and at which a quorum is present shall be sufficient to elect a director. In a contested election, a director shall be elected only if the director receives a majority of the votes entitled to be cast for that director at a meeting of stockholders duly called and at which a quorum is present. For purposes of this Bylaw provision, a "contested election" shall mean any election of directors with respect to which (i) the secretary of the Corporation receives notice that one or more stockholders have nominated an individual or individuals for election as a director or directors in compliance with the requirements set forth in these Bylaws and (ii) all such nominations have not been withdrawn by such stockholder(s) on or prior to the date the Corporation first mails its notice of meeting for such meeting to the stockholders, and, as a result of which, the number of nominees is greater than the number of directors to be elected at the meeting. Each share entitles the holder thereof to vote for as many individuals as there are directors to be elected and for whose election the holder is entitled to vote. Cumulative voting is not permitted. A majority of the votes cast at a meeting of stockholders duly called and at which a quorum is present shall be sufficient to approve any other matter which may properly come before the meeting, unless a different vote is required by statute, the charter of the Corporation or these Bylaws. Unless otherwise provided in the charter of the Corporation, each outstanding share of stock, regardless of class, entitles the holder thereof to cast one vote on each matter submitted to a vote at a meeting of stockholders. Voting on any question or in any election may be *viva voce* unless the chairman of the meeting shall order that voting be by ballot or otherwise.

Section 8. PROXIES. A holder of record of shares of stock of the Corporation may cast votes in person or by proxy executed or authorized by the stockholder or by the stockholder's duly authorized agent in any manner permitted by applicable law. Such proxy or evidence of authorization of such proxy shall be filed with the secretary of the Corporation before or at the meeting. No proxy shall be valid more than eleven months after its date unless otherwise provided in the proxy.

Section 9. VOTING OF STOCK BY CERTAIN HOLDERS. Stock of the Corporation registered in the name of a corporation, limited liability company, partnership, joint venture, trust

or other entity, if entitled to be voted, may be voted by the chief executive officer, the president or any vice president, managing member, manager, general partner or trustee thereof, as the case may be, or a proxy appointed by any of the foregoing individuals, unless some other person who has been appointed to vote such stock pursuant to a bylaw or a resolution of the governing body of such corporation or other entity or agreement of the partners of a partnership presents a certified copy of such bylaw, resolution or agreement, in which case such person may vote such stock. Any trustee or fiduciary, in such capacity, may vote stock registered in such trustee's or fiduciary's name, either in person or by proxy.

Shares of stock of the Corporation directly or indirectly owned by it shall not be voted at any meeting and shall not be counted in determining the total number of outstanding shares entitled to be voted at any given time, unless they are held by it in a fiduciary capacity, in which case they may be voted and shall be counted in determining the total number of outstanding shares entitled to vote at any given time.

The Board of Directors may adopt by resolution a procedure by which a stockholder may certify in writing to the Corporation that any shares of stock registered in the name of the stockholder are held for the account of a specified person other than the stockholder. The resolution shall set forth the class of stockholders who may make the certification, the purpose for which the certification may be made, the form of certification and the information to be contained in it; if the certification is with respect to a record date, the time after the record date within which the certification must be received by the Corporation; and any other provisions with respect to the procedure which the Board of Directors considers necessary or appropriate. On receipt by the secretary of the Corporation of such certification, the person specified in the certification shall be regarded as, for the purposes set forth in the certification, the holder of record of the specified stock in place of the stockholder who makes the certification.

Section 10. INSPECTORS. The Board of Directors or the chairman of the meeting may appoint, before or at the meeting, one or more inspectors for the meeting and any successor to the inspector. Except as otherwise provided by the chairman of the meeting, the inspectors, if any, shall (i) determine the number of shares of stock represented at the meeting, in person or by proxy, and the validity and effect of proxies, (ii) receive and tabulate all votes, ballots or consents, (iii) report such tabulation to the chairman of the meeting, (iv) hear and determine all challenges and questions arising in connection with the right to vote, and (v) do such acts as are proper to fairly conduct the election or vote. Each such report shall be in writing and signed by the inspector or by a majority of them if there is more than one inspector acting at such meeting. If there is more than one inspector, the report of a majority shall be the report of the inspectors. The report of the inspector or inspectors on the number of shares represented at the meeting and the results of the voting shall be *prima facie* evidence thereof.

Section 11. ADVANCE NOTICE OF STOCKHOLDER NOMINEES FOR DIRECTOR AND OTHER STOCKHOLDER PROPOSALS.

(a) Annual Meetings of Stockholders. (2) Nominations of individuals for election to the Board of Directors and the proposal of other business to be considered by the

stockholders may be made at an annual meeting of stockholders (i) pursuant to the Corporation's notice of meeting, (ii) by or at the direction of the Board of Directors or (iii) by any stockholder of the Corporation who was a stockholder of record at the record date set by the Board of Directors for the purpose of determining stockholders entitled to vote at the annual meeting, at the time of giving of notice by the stockholder as provided for in this Section 11(a) and at the time of the annual meeting (and any postponement or adjournment thereof), who is entitled to vote at the meeting in the election of each individual so nominated or on any such other business and who has complied with this Section 11(a).

(2) For any nomination or other business to be properly brought before an annual meeting by a stockholder pursuant to clause (iii) of paragraph (a)(1) of this Section 11, the stockholder must have given timely notice thereof in writing to the secretary of the Corporation and any such other business must otherwise be a proper matter for action by the stockholders. To be timely, a stockholder's notice shall set forth all information required under this Section 11 and shall be delivered to the secretary at the principal executive office of the Corporation not earlier than the 150<sup>th</sup> day nor later than 5:00 p.m., Eastern Time, on the 120<sup>th</sup> day prior to the first anniversary of the date of the proxy statement (as defined in Section 11(c)(3) of this Article II) for the preceding year's annual meeting; provided, however, that in connection with the Corporation's first annual meeting or in the event that the date of the annual meeting is advanced or delayed by more than 30 days from the first anniversary of the date of the preceding year's annual meeting, in order for notice by the stockholder to be timely, such notice must be so delivered not earlier than the 150<sup>th</sup> day prior to the date of such annual meeting and not later than 5:00 p.m., Eastern Time, on the later of the 120<sup>th</sup> day prior to the date of such annual meeting, as originally convened, or the tenth day following the day on which public announcement of the date of such meeting is first made. The public announcement of a postponement or adjournment of an annual meeting shall not commence a new time period for the giving of a stockholder's notice as described above.

(3) Such stockholder's notice shall set forth:

(i) as to each individual whom the stockholder proposes to nominate for election or reelection as a director (each, a "Proposed Nominee"), all information relating to the Proposed Nominee that would be required to be disclosed in connection with the solicitation of proxies for the election of the Proposed Nominee as a director in an election contest (even if an election contest is not involved), or would otherwise be required in connection with such solicitation, in each case pursuant to Regulation 14A (or any successor provision) under the Exchange Act;

(ii) whether such stockholder believes any such Proposed Nominee is, or is not, an "interested person" of the Corporation, as defined in the Investment Company Act of 1940, as amended, and the rules, regulations, and guidance of the Securities and Exchange Commission and its staff thereunder (the "Investment Company Act") and information regarding such individual that is sufficient, in the discretion of the Board of Directors or any committee thereof or any authorized officer of the Corporation, to make such determination;

(iii) as to any other business that the stockholder proposes to bring before the meeting, a description of such business, the stockholder's reasons for proposing such business at the meeting and any material interest in such business of such stockholder or any Stockholder Associated Person (as defined below), individually or in the aggregate, including any anticipated benefit to the stockholder or the Stockholder Associated Person therefrom;

(iv) as to the stockholder giving the notice, any Proposed Nominee and any Stockholder Associated Person,

(A) the class, series and number of all shares of stock or other securities of the Corporation or any affiliate thereof (collectively, the "Company Securities"), if any, which are owned (beneficially or of record) by such stockholder, Proposed Nominee or Stockholder Associated Person, the date on which each such Company Security was acquired and the investment intent of such acquisition, and any short interest (including any opportunity to profit or share in any benefit from any decrease in the price of such stock or other security) in any Company Securities of any such person,

(B) the nominee holder for, and number of, any Company Securities owned beneficially but not of record by such stockholder, Proposed Nominee or Stockholder Associated Person,

(C) whether and the extent to which such stockholder, Proposed Nominee or Stockholder Associated Person, directly or indirectly (through brokers, nominees or otherwise), is subject to or during the last six months has engaged in any hedging, derivative or other transaction or series of transactions or entered into any other agreement, arrangement or understanding (including any short interest, any borrowing or lending of securities or any proxy or voting agreement), the effect or intent of which is to (I) manage risk or benefit of changes in the price of (x) Company Securities or (y) any security of any other closed-end investment company (a "Peer Group Company") for such stockholder, Proposed Nominee or Stockholder Associated Person or (II) increase or decrease the voting power of such stockholder, Proposed Nominee or Stockholder Associated Person in the Corporation or any affiliate thereof (or, as applicable, in any Peer Group Company) disproportionately to such person's economic interest in the Company Securities (or, as applicable, in any Peer Group Company); and

(D) any substantial interest, direct or indirect (including, without limitation, any existing or prospective commercial, business or contractual relationship with the Corporation), by security holdings or otherwise, of such stockholder, Proposed Nominee or Stockholder Associated Person, in the Corporation or any affiliate thereof, other than an interest arising from the ownership of Company Securities where such stockholder, Proposed Nominee or Stockholder Associated Person receives no extra or special benefit not shared on a *pro rata* basis by all other holders of the same class or series;

(v) as to the stockholder giving the notice, any Stockholder Associated Person with an interest or ownership referred to in clauses (ii) or (iii) of this paragraph (3) of this Section 11(a) and any Proposed Nominee,

(A) the name and address of such stockholder, as they appear on the Corporation's stock ledger, and the current name and business address, if different, of each such Stockholder Associated Person and any Proposed Nominee and

(B) the investment strategy or objective, if any, of such stockholder and each such Stockholder Associated Person who is not an individual and a copy of the prospectus, offering memorandum or similar document, if any, provided to investors or potential investors in such stockholder and each such Stockholder Associated Person;

(vi) the name and address of any person who contacted or was contacted by the stockholder giving the notice or any Stockholder Associated Person about the Proposed Nominee or other business proposal; and

(vii) to the extent known by the stockholder giving the notice, the name and address of any other stockholder supporting the nominee for election or reelection as a director or the proposal of other business.

(4) Such stockholder's notice shall, with respect to any Proposed Nominee, be accompanied by a written undertaking executed by the Proposed Nominee (i) that such Proposed Nominee (a) is not, and will not become, a party to any agreement, arrangement or understanding with any person or entity other than the Corporation in connection with service or action as a director that has not been disclosed to the Corporation and (b) will serve as a director of the Corporation if elected; and (ii) attaching a completed Proposed Nominee questionnaire (which questionnaire shall be provided by the Corporation, upon request by the stockholder providing the notice, and shall include all information relating to the Proposed Nominee that would be required to be disclosed in connection with the solicitation of proxies for the election of the Proposed Nominee as a director in an election contest (even if an election contest is not involved), or would otherwise be required in connection with such solicitation, in each case pursuant to Regulation 14A (or any successor provision) under the Exchange Act, or would be required pursuant to the rules of any national securities exchange on which any securities of the Corporation are listed or over-the-counter market on which any securities of the Corporation are traded).

(5) Notwithstanding anything in this subsection (a) of this Section 11 to the contrary, in the event that the number of directors to be elected to the Board of Directors is increased, and there is no public announcement of such action at least 130 days prior to the first anniversary of the date of the proxy statement (as defined in Section 11(c)(3) of this Article II) for the preceding year's annual meeting, a stockholder's notice required by this Section 11(a) shall also be considered timely, but only with respect to nominees for any new positions created by such increase, if it shall be delivered to the secretary at the principal executive office of the Corporation not later than 5:00 p.m., Eastern Time, on the tenth day following the day on which such public announcement is first made by the Corporation.

(6) For purposes of this Section 11, "Stockholder Associated Person" of any stockholder shall mean (i) any person acting in concert with such stockholder, (ii) any beneficial owner of shares of stock of the Corporation owned of record or beneficially by such

stockholder (other than a stockholder that is a depositary) and (iii) any person that directly, or indirectly through one or more intermediaries, controls, or is controlled by, or is under common control with, such stockholder or such Stockholder Associated Person.

(b) Special Meetings of Stockholders. Only such business shall be conducted at a special meeting of stockholders as shall have been brought before the meeting pursuant to the Corporation's notice of meeting. Nominations of individuals for election to the Board of Directors may be made at a special meeting of stockholders at which directors are to be elected only (i) by or at the direction of the Board of Directors or (ii) provided that the special meeting has been called in accordance with Section 3(a) of this Article II for the purpose of electing directors, by any stockholder of the Corporation who is a stockholder of record at the record date set by the Board of Directors for the purpose of determining stockholders entitled to vote at the special meeting, at the time of giving of notice provided for in this Section 11 and at the time of the special meeting (and any postponement or adjournment thereof), who is entitled to vote at the meeting in the election of each individual so nominated and who has complied with the notice procedures set forth in this Section 11. In the event the Corporation calls a special meeting of stockholders for the purpose of electing one or more individuals to the Board of Directors, any stockholder may nominate an individual or individuals (as the case may be) for election as a director as specified in the Corporation's notice of meeting, if the stockholder's notice, containing the information required by paragraphs (a)(3) and (4) of this Section 11, is delivered to the secretary at the principal executive office of the Corporation not earlier than the 120<sup>th</sup> day prior to such special meeting and not later than 5:00 p.m., Eastern Time, on the later of the 90<sup>th</sup> day prior to such special meeting or the tenth day following the day on which public announcement is first made of the date of the special meeting and of the nominees proposed by the Board of Directors to be elected at such meeting. The public announcement of a postponement or adjournment of a special meeting shall not commence a new time period for the giving of a stockholder's notice as described above.

(c) General. (1) If information submitted pursuant to this Section 11 by any stockholder proposing a nominee for election as a director or any proposal for other business at a meeting of stockholders shall be inaccurate in any material respect, such information may be deemed not to have been provided in accordance with this Section 11. Any such stockholder shall notify the Corporation of any inaccuracy or change (within two Business Days of becoming aware of such inaccuracy or change) in any such information. Upon written request by the secretary or the Board of Directors, any such stockholder shall provide, within five Business Days of delivery of such request (or such other period as may be specified in such request), (A) written verification, satisfactory, in the discretion of the Board of Directors or any authorized officer of the Corporation, to demonstrate the accuracy of any information submitted by the stockholder pursuant to this Section 11, and (B) a written update of any information (including, if requested by the Corporation, written confirmation by such stockholder that it continues to intend to bring such nomination or other business proposal before the meeting) submitted by the stockholder pursuant to this Section 11 as of an earlier date. If a stockholder fails to provide such written verification or written update within such period, the information as to which written verification or a written update was requested may be deemed not to have been provided in accordance with this Section 11.

(2) Only such individuals who are nominated in accordance with this Section 11 shall be eligible for election by stockholders as directors, and only such business shall be conducted at a meeting of stockholders as shall have been brought before the meeting in accordance with this Section 11. The chairman of the meeting shall have the power to determine whether a nomination or any other business proposed to be brought before the meeting was made or proposed, as the case may be, in accordance with this Section 11.

(3) For purposes of this Section 11, “the date of the proxy statement” shall have the same meaning as “the date of the company’s proxy statement released to shareholders” as used in Rule 14a-8(e) promulgated under the Exchange Act, as interpreted by the Securities and Exchange Commission from time to time. “Public announcement” shall mean disclosure (A) in a press release reported by the Dow Jones News Service, Associated Press, Business Wire, PR Newswire or other widely circulated news or wire service or (B) in a document publicly filed by the Corporation with the Securities and Exchange Commission pursuant to the Exchange Act or the Investment Company Act.

(4) Notwithstanding the foregoing provisions of this Section 11, a stockholder shall also comply with all applicable requirements of state law and of the Exchange Act with respect to the matters set forth in this Section 11. Nothing in this Section 11 shall be deemed to affect any right of a stockholder to request inclusion of a proposal in, or the right of the Corporation to omit a proposal from, any proxy statement filed by the Corporation with the Securities and Exchange Commission pursuant to Rule 14a-8 (or any successor provision) under the Exchange Act. Nothing in this Section 11 shall require disclosure of revocable proxies received by the stockholder or Stockholder Associated Person pursuant to a solicitation of proxies after the filing of an effective Schedule 14A by such stockholder or Stockholder Associated Person under Section 14(a) of the Exchange Act.

(5) Notwithstanding anything in these Bylaws to the contrary, except as otherwise determined by the chairman of the meeting, if the stockholder giving notice as provided for in this Section 11 does not appear in person or by proxy at such annual or special meeting to present each nominee for election as a director or the proposed business, as applicable, such matter shall not be considered at the meeting.

Section 12. VIRTUAL MEETINGS. Notwithstanding anything to the contrary in these Bylaws, the Board of Directors may determine at any time, including, without limitation, after the calling of any meeting of stockholders, that any meeting of stockholders be held solely by means of remote communication or both at a physical location and by means of remote communication. Notwithstanding anything to the contrary in these Bylaws, if it is determined after notice of the meeting has been sent to stockholders that participation by stockholders in the meeting shall or may be conducted by means of remote communication, notice thereof may be provided at any time in any manner permitted by law. Stockholders and proxy holders entitled to be present and to vote at the meeting that are not physically present at such a meeting but participate by means of remote communication shall be considered present in person for all purposes under these Bylaws and may vote at such a meeting. Subject to any guidelines or procedures that the Board of Directors may adopt, any meeting at which stockholders or proxy

holders are permitted to participate by means of remote communication shall be conducted in accordance with the following, unless otherwise permitted by applicable law or regulation:

(i) The Corporation shall implement reasonable measures to verify that each person considered present and authorized to vote at the meeting by means of remote communication is a stockholder or proxy holder;

(ii) The Corporation shall implement reasonable measures to provide the stockholders and proxy holders a reasonable opportunity to participate in the meeting and to vote on matters submitted to the stockholders, including an opportunity to read or hear the proceedings of the meeting substantially concurrently with the proceedings; and

(iii) In the event any stockholder or proxy holder votes or takes other action at the meeting by means of remote communication, a record of the vote or other action shall be maintained by the Corporation.

### **ARTICLE III**

#### **DIRECTORS**

Section 1. GENERAL POWERS. The business and affairs of the Corporation shall be managed under the direction of the Board of Directors.

Section 2. NUMBER, TENURE, QUALIFICATIONS AND RESIGNATION. A majority of the entire Board of Directors may establish, increase or decrease the number of directors, provided that the number thereof shall never be less than the minimum number required by the Maryland General Corporation Law (the "MGCL"), which is one, nor more than 15, and further provided that the tenure of office of a director shall not be affected by any decrease in the number of directors. Any director of the Corporation may resign at any time by delivering his or her resignation to the Board of Directors, the chairman of the board or the secretary. Any resignation shall take effect immediately upon its receipt or at such later time specified in the resignation. The acceptance of a resignation shall not be necessary to make it effective unless otherwise stated in the resignation.

Section 3. ANNUAL AND REGULAR MEETINGS. An annual meeting of the Board of Directors may be held immediately after and at the same place as the annual meeting of stockholders, no notice other than this Bylaw being necessary. In the event such meeting is not so held, the meeting may be held at such time and place as shall be specified in a notice given as hereinafter provided for special meetings of the Board of Directors. The Board of Directors may provide, by resolution, the time and place of regular meetings of the Board of Directors without other notice than such resolution.

Section 4. SPECIAL MEETINGS. Special meetings of the Board of Directors may be called by or at the request of the chairman of the board, the chief executive officer, the president or a majority of the directors then in office. The person or persons authorized to call special



meetings of the Board of Directors may fix the time and place of any special meeting of the Board of Directors called by them. The Board of Directors may provide, by resolution, the time and place of special meetings of the Board of Directors without other notice than such resolution.

Section 5. NOTICE. Notice of any special meeting of the Board of Directors shall be delivered personally or by telephone, electronic mail, facsimile transmission, courier or United States mail to each director at his or her business or residence address. Notice by personal delivery, telephone, electronic mail or facsimile transmission shall be given at least 24 hours prior to the meeting. Notice by United States mail shall be given at least three days prior to the meeting. Notice by courier shall be given at least two days prior to the meeting. Telephone notice shall be deemed to be given when the director or his or her agent is personally given such notice in a telephone call to which the director or his or her agent is a party. Electronic mail notice shall be deemed to be given upon transmission of the message to the electronic mail address given to the Corporation by the director. Facsimile transmission notice shall be deemed to be given upon completion of the transmission of the message to the number given to the Corporation by the director and receipt of a completed answer-back indicating receipt. Notice by United States mail shall be deemed to be given when deposited in the United States mail properly addressed, with postage thereon prepaid. Notice by courier shall be deemed to be given when deposited with or delivered to a courier properly addressed. Neither the business to be transacted at, nor the purpose of, any annual, regular or special meeting of the Board of Directors need be stated in the notice, unless specifically required by statute or these Bylaws.

Section 6. QUORUM. A majority of the directors shall constitute a quorum for the transaction of business at any meeting of the Board of Directors, provided that, if less than a majority of such directors is present at such meeting, a majority of the directors present may adjourn the meeting from time to time without further notice, and provided further that if, pursuant to applicable law, the charter of the Corporation or these Bylaws, the vote of a majority or other percentage of a specified group of directors is required for action, a quorum must also include a majority or such other percentage of such group.

The directors present at a meeting which has been duly called and at which a quorum has been established may continue to transact business until adjournment, notwithstanding the withdrawal from the meeting of enough directors to leave fewer than required to establish a quorum.

Section 7. VOTING. The action of a majority of the directors present at a meeting at which a quorum is present shall be the action of the Board of Directors, unless the concurrence of a greater proportion is required for such action by applicable law, the charter of the Corporation or these Bylaws. If enough directors have withdrawn from a meeting to leave fewer than required to establish a quorum but the meeting is not adjourned, the action of the majority of that number of directors necessary to constitute a quorum at such meeting shall be the action of the Board of Directors, unless the concurrence of a greater proportion is required for such action by applicable law, the charter of the Corporation or these Bylaws.

Section 8. ORGANIZATION. At each meeting of the Board of Directors, the chairman of the board or, in the absence of the chairman, the vice chairman of the board, if any,

shall act as chairman of the meeting. In the absence of both the chairman and vice chairman of the board, the chief executive officer or, in the absence of the chief executive officer, the president or, in the absence of the president, a director chosen by a majority of the directors present, shall act as chairman of the meeting. The secretary or, in his or her absence, an assistant secretary of the Corporation, or, in the absence of the secretary and all assistant secretaries, an individual appointed by the chairman of the meeting, shall act as secretary of the meeting.

Section 9. TELEPHONE MEETINGS. Directors may participate in a meeting by means of a conference telephone or other communications equipment if all persons participating in the meeting can hear each other at the same time; provided however, this Section 9 does not apply to any action of the directors pursuant to the Investment Company Act that requires the vote of the directors to be cast in person at a meeting. Participation in a meeting by these means shall constitute presence in person at the meeting.

Section 10. CONSENT BY DIRECTORS WITHOUT A MEETING. Any action required or permitted to be taken at any meeting of the Board of Directors may be taken without a meeting, if a consent in writing or by electronic transmission to such action is given by each director and is filed with the minutes of proceedings of the Board of Directors; provided however, this Section 10 does not apply to any action of the directors pursuant to the Investment Company Act that requires the vote of the directors to be cast in person at a meeting.

Section 11. VACANCIES. If for any reason any or all the directors cease to be directors, such event shall not terminate the Corporation or affect these Bylaws or the powers of the remaining directors hereunder, if any. Pursuant to the Corporation's election in Article IV of the charter of the Corporation, subject to applicable requirements of the Investment Company Act, except as may be provided by the Board of Directors in setting the terms of any class or series of preferred stock, (a) any vacancy on the Board of Directors may be filled only by a majority of the remaining directors, even if the remaining directors do not constitute a quorum and (b) any director elected to fill a vacancy shall serve for the remainder of the full term of the class in which the vacancy occurred and until a successor is duly elected and qualifies.

Section 12. COMPENSATION. Directors shall not receive any stated salary for their services as directors but, by resolution of the Board of Directors, may receive compensation per year and/or per meeting and for any service or activity they performed or engaged in as directors. Directors may be reimbursed for expenses of attendance, if any, at each annual, regular or special meeting of the Board of Directors or of any committee thereof and for their expenses, if any, in connection with any service or activity they perform or engage in as directors; but nothing herein contained shall be construed to preclude any directors from serving the Corporation in any other capacity and receiving compensation therefor.

Section 13. LOSS OF DEPOSITS. No director shall be liable for any loss which may occur by reason of the failure of the bank, trust company, savings and loan association, or other institution with whom moneys or stock have been deposited.

Section 14. SURETY BONDS. Unless required by law, no director shall be obligated to give any bond or surety or other security for the performance of any of his or her duties.

Section 15. RELIANCE. Each director and officer of the Corporation shall, in the performance of his or her duties with respect to the Corporation, be entitled to rely on any information, opinion, report or statement, including any financial statement or other financial data, prepared or presented by an officer or employee of the Corporation whom the director or officer reasonably believes to be reliable and competent in the matters presented, by a lawyer, certified public accountant or other person, as to a matter which the director or officer reasonably believes to be within the person's professional or expert competence, or, with respect to a director, by a committee of the Board of Directors on which the director does not serve, as to a matter within its designated authority, if the director reasonably believes the committee to merit confidence.

Section 16. RATIFICATION. The Board of Directors or the stockholders may ratify and make binding on the Corporation any act, omission, failure to act or determination made not to act (an "Act") by the Corporation or its officers to the extent that the Board of Directors or the stockholders could have originally authorized the Act and, if so ratified, such Act shall have the same force and effect as if originally duly authorized, and such ratification shall be binding upon the Corporation and its stockholders. Any Act questioned in any stockholders' derivative proceeding or any other proceeding on the ground of lack of authority, defective or irregular execution, adverse interest of a director, officer or stockholder, non-disclosure, miscomputation, the application of improper principles or practices of accounting or otherwise, may be ratified, before or after judgment, by the Board of Directors or by the stockholders, and such ratification shall be binding upon the Corporation and its stockholders and shall constitute a bar to any claim or execution of any judgment in respect of such questioned Act.

Section 17. EMERGENCY PROVISIONS. Notwithstanding any other provision in the charter of the Corporation or these Bylaws, this Section 17 shall apply during the existence of any catastrophe, or other similar emergency condition, as a result of which a quorum of the Board of Directors under Article III of these Bylaws cannot readily be obtained (an "Emergency"). During any Emergency, unless otherwise provided by the Board of Directors, (i) a meeting of the Board of Directors or a committee thereof may be called by any director or officer by any means feasible under the circumstances; (ii) notice of any meeting of the Board of Directors during such an Emergency may be given less than 24 hours prior to the meeting to as many directors and by such means as may be feasible at the time, including publication, television or radio; and (iii) the number of directors necessary to constitute a quorum shall be one-third of the entire Board of Directors.

#### **ARTICLE IV**

#### **COMMITTEES**

Section 1. NUMBER, TENURE AND QUALIFICATIONS. The Board of Directors may appoint from among its members an Executive Committee, an Audit Committee, a Nominating and Corporate Governance Committee, a Compensation Committee and other committees, composed of one or more directors, to serve at the pleasure of the Board of Directors.

In the absence of any member of any such committee, the members thereof present at any meeting, whether or not they constitute a quorum, may appoint another director to act in the place of such absent member.

Section 2. POWERS. The Board of Directors may delegate to any committee appointed under Section 1 of this Article IV any of the powers of the Board of Directors, except as prohibited by law. Except as may be otherwise provided by the Board of Directors, any committee may delegate some or all of its power and authority to one or more subcommittees, composed of one or more directors, as the committee deems appropriate in its sole discretion.

Section 3. MEETINGS. Notice of committee meetings shall be given in the same manner as notice for special meetings of the Board of Directors. A majority of the members of the committee shall constitute a quorum for the transaction of business at any meeting of the committee. The act of a majority of the committee members present at a meeting shall be the act of such committee. The Board of Directors may designate a chairman of any committee, and such chairman or, in the absence of a chairman, any two members of any committee (if there are at least two members of the committee) may fix the time and place of its meeting unless the Board shall otherwise provide.

Section 4. TELEPHONE MEETINGS. Members of a committee of the Board of Directors may participate in a meeting by means of a conference telephone or other communications equipment if all persons participating in the meeting can hear each other at the same time. Participation in a meeting by these means shall constitute presence in person at the meeting.

Section 5. CONSENT BY COMMITTEES WITHOUT A MEETING. Any action required or permitted to be taken at any meeting of a committee of the Board of Directors may be taken without a meeting, if a consent to such action is given in writing or by electronic transmission by each member of the committee and is filed with the minutes of proceedings of such committee.

Section 6. VACANCIES. Subject to the provisions hereof, the Board of Directors shall have the power at any time to change the membership of any committee, to appoint the chair of any committee, to fill any vacancy, to designate an alternate member to replace any absent or disqualified member or to dissolve any such committee.

## **ARTICLE V**

### **OFFICERS**

Section 1. GENERAL PROVISIONS. The officers of the Corporation shall include a president, a secretary and a treasurer and may include a chief executive officer, one or more vice presidents, a chief operating officer, a chief financial officer, a chief investment officer, a chief compliance officer, one or more assistant secretaries and one or more assistant treasurers. In addition, the Board of Directors may from time to time elect such other officers with such powers and duties as it shall deem necessary or desirable. The Board of Directors may designate a

Chairman of the Board and a Vice Chairman of the Board, who shall not, solely by reason of such designation, be officers of the Corporation but shall have such powers and duties as determined by the Board of Directors from time to time. The officers of the Corporation shall be elected annually by the Board of Directors, except that the chief executive officer or president may from time to time appoint one or more vice presidents, assistant secretaries and assistant treasurers or other officers. Each officer shall serve until his or her successor is elected and qualifies or until his or her death, or his or her resignation or removal in the manner hereinafter provided. Any two or more offices except president and vice president may be held by the same person. Election of an officer or agent shall not of itself create contract rights between the Corporation and such officer or agent.

Section 2. REMOVAL AND RESIGNATION. Any officer or agent of the Corporation may be removed, with or without cause, by the Board of Directors if in its judgment the best interests of the Corporation would be served thereby, but such removal shall be without prejudice to the contract rights, if any, of the person so removed. Any officer of the Corporation may resign at any time by delivering his or her resignation to the Board of Directors, the chairman of the board, the chief executive officer, the president or the secretary. Any resignation shall take effect immediately upon its receipt or at such later time specified in the notice of resignation. The acceptance of a resignation shall not be necessary to make it effective unless otherwise stated in the resignation. Such resignation shall be without prejudice to the contract rights, if any, of the Corporation.

Section 3. VACANCIES. A vacancy in any office may be filled by the Board of Directors for the balance of the term.

Section 4. CHIEF EXECUTIVE OFFICER. The Board of Directors may designate a chief executive officer. In the absence of such designation, the president shall be the chief executive officer of the Corporation. The chief executive officer shall have general responsibility for implementation of the policies of the Corporation, as determined by the Board of Directors, and for the management of the business and affairs of the Corporation. He or she may execute any deed, mortgage, bond, contract or other instrument, except in cases where the execution thereof shall be expressly delegated by the Board of Directors or by these Bylaws to some other officer or agent of the Corporation or shall be required by law to be otherwise executed; and in general shall perform all duties incident to the office of chief executive officer and such other duties as may be prescribed by the Board of Directors from time to time.

Section 5. CHIEF OPERATING OFFICER. The Board of Directors may designate a chief operating officer. The chief operating officer shall have the responsibilities and duties as determined by the Board of Directors or the chief executive officer.

Section 6. CHIEF INVESTMENT OFFICER. The Board of Directors may designate a chief investment officer. The chief investment officer shall have the responsibilities and duties as determined by the Board of Directors or the chief executive officer.

Section 7. CHIEF FINANCIAL OFFICER. The Board of Directors may designate a chief financial officer. The chief financial officer shall have the responsibilities and duties as determined by the Board of Directors or the chief executive officer.

Section 8. CHIEF COMPLIANCE OFFICER. The chief compliance officer, subject to the direction of and reporting to the Board of Directors, shall be responsible for the oversight of the Corporation's compliance with the federal securities laws. The designation, compensation and removal of the chief compliance officer must be approved by the Board of Directors, including a majority of the directors who are not "interested persons" (as such term is defined in Section 2(a)(19) of the Investment Company Act) of the Corporation. The chief compliance officer shall perform such executive, supervisory and management functions and duties as may be assigned to him or her from time to time.

Section 9. PRESIDENT. In the absence of a designation of a chief executive officer by the Board of Directors, the president shall be the chief executive officer. He or she may execute any deed, mortgage, bond, contract or other instrument, except in cases where the execution thereof shall be expressly delegated by the Board of Directors or by these Bylaws to some other officer or agent of the Corporation or shall be required by law to be otherwise executed; and in general shall perform all duties incident to the office of president and such other duties as may be prescribed by the Board of Directors from time to time.

Section 10. VICE PRESIDENTS. In the absence of the president or in the event of a vacancy in such office, the vice president (or in the event there be more than one vice president, the vice presidents in the order designated at the time of their election or, in the absence of any designation, then in the order of their election) shall perform the duties of the president and when so acting shall have all the powers of and be subject to all the restrictions upon the president; and shall perform such other duties as from time to time may be assigned to such vice president by the chief executive officer, the president or the Board of Directors. The Board of Directors may designate one or more vice presidents as executive vice president, senior vice president, or vice president for particular areas of responsibility.

Section 11. SECRETARY. The secretary shall (a) keep the minutes of the proceedings of the stockholders, the Board of Directors and committees of the Board of Directors in one or more books provided for that purpose; (b) see that all notices are duly given in accordance with the provisions of these Bylaws or as required by law; (c) be custodian of the corporate records and of the seal of the Corporation; (d) keep a register of the address of each stockholder which shall be furnished to the secretary by such stockholder; (e) have general charge of the stock transfer books of the Corporation; and (f) in general perform such other duties as from time to time may be assigned to him or her by the chief executive officer, the president or the Board of Directors.

Section 12. TREASURER. The treasurer shall keep full and accurate accounts of receipts and disbursements in books belonging to the Corporation, shall deposit all moneys and other valuable effects in the name and to the credit of the Corporation in such depositories as may be designated by the Board of Directors and in general perform such other duties as from time to time may be assigned to him or her by the chief executive officer, the president or the Board of

Directors. In the absence of a designation of a chief financial officer by the Board of Directors, the treasurer shall be the chief financial officer of the Corporation. The treasurer shall disburse the funds of the Corporation as may be ordered by the Board of Directors, taking proper vouchers for such disbursements, and shall render to the chief executive officer, the president and the Board of Directors, at the regular meetings of the Board of Directors or whenever it may so require, an account of all his or her transactions as treasurer and of the financial condition of the Corporation.

Section 13. ASSISTANT SECRETARIES AND ASSISTANT TREASURERS. The assistant secretaries and assistant treasurers, in general, shall perform such duties as shall be assigned to them by the secretary or treasurer, respectively, or by the chief executive officer, the president or the Board of Directors.

Section 14. COMPENSATION. The compensation of the officers shall be fixed from time to time by or under the authority of the Board of Directors and no officer shall be prevented from receiving such compensation by reason of the fact that he or she is also a director.

## ARTICLE VI

### CONTRACTS, CHECKS AND DEPOSITS

Section 1. CONTRACTS. The Board of Directors may authorize any officer or agent to enter into any contract or to execute and deliver any instrument in the name of and on behalf of the Corporation and such authority may be general or confined to specific instances. Any agreement, deed, mortgage, lease or other document shall be valid and binding upon the Corporation when duly authorized or ratified by action of the Board of Directors and executed by an authorized person.

Section 2. CHECKS AND DRAFTS. All checks, drafts or other orders for the payment of money, notes or other evidences of indebtedness issued in the name of the Corporation shall be signed by such officer or agent of the Corporation in such manner as shall from time to time be determined by the Board of Directors.

Section 3. DEPOSITS. All funds of the Corporation not otherwise employed shall be deposited or invested from time to time to the credit of the Corporation as the Board of Directors, the chief executive officer, the president, the chief financial officer, or any other officer designated by the Board of Directors may determine.

## ARTICLE VII

### STOCK

Section 1. CERTIFICATES. Except as may be otherwise provided by the Board of Directors or any officer of the Corporation, stockholders of the Corporation are not entitled to certificates representing the shares of stock held by them. In the event that the Corporation issues shares of stock represented by certificates, such certificates shall be in such form as prescribed by

the Board of Directors or a duly authorized officer, shall contain the statements and information required by the MGCL and shall be signed by the officers of the Corporation in any manner permitted by the MGCL. In the event that the Corporation issues shares of stock without certificates, to the extent then required by the MGCL the Corporation shall provide to the record holders of such shares a written statement of the information required by the MGCL to be included on stock certificates. There shall be no difference in the rights and obligations of stockholders based on whether or not their shares are represented by certificates.

Section 2. TRANSFERS. All transfers of shares of stock shall be made on the books of the Corporation, by the holder of the shares, in person or by his or her attorney, in such manner as the Board of Directors or any officer of the Corporation may prescribe and, if such shares are certificated, upon surrender of certificates duly endorsed. The issuance of a new certificate upon the transfer of certificated shares is subject to the determination of the Board of Directors or an officer of the Corporation that such shares shall no longer be represented by certificates. Upon the transfer of any uncertificated shares, the Corporation shall provide to the record holders of such shares, to the extent then required by the MGCL, a written statement of the information required by the MGCL to be included on stock certificates.

The Corporation shall be entitled to treat the holder of record of any share of stock as the holder in fact thereof and, accordingly, shall not be bound to recognize any equitable or other claim to or interest in such share or on the part of any other person, whether or not it shall have express or other notice thereof, except as otherwise expressly provided by the laws of the State of Maryland.

Notwithstanding the foregoing, transfers of shares of any class or series of stock will be subject in all respects to the charter of the Corporation and all of the terms and conditions contained therein.

Section 3. REPLACEMENT CERTIFICATE. Any officer of the Corporation may direct a new certificate or certificates to be issued in place of any certificate or certificates theretofore issued by the Corporation alleged to have been lost, destroyed, stolen or mutilated, upon the making of an affidavit of that fact by the person claiming the certificate to be lost, destroyed, stolen or mutilated; provided, however, if such shares have ceased to be certificated, no new certificate shall be issued unless requested in writing by such stockholder and the Board of Directors or an officer of the Corporation has determined that such certificates may be issued. Unless otherwise determined by an officer of the Corporation, the owner of such lost, destroyed, stolen or mutilated certificate or certificates, or his or her legal representative, shall be required, as a condition precedent to the issuance of a new certificate or certificates, to give the Corporation a bond in such sums as it may direct as indemnity against any claim that may be made against the Corporation.

Section 4. FIXING OF RECORD DATE. The Board of Directors may set, in advance, a record date for the purpose of determining stockholders entitled to notice of or to vote at any meeting of stockholders or determining stockholders entitled to receive payment of any dividend or the allotment of any other rights, or in order to make a determination of stockholders for any other proper purpose. Such record date, in any case, shall not be prior to the close of business on the day the record date is fixed and shall be not more than 90 days and, in the case of a meeting of



stockholders, not less than ten days, before the date on which the meeting or particular action requiring such determination of stockholders of record is to be held or taken.

When a record date for the determination of stockholders entitled to notice of or to vote at any meeting of stockholders has been set as provided in this section, such record date shall continue to apply to the meeting if postponed or adjourned, except if the meeting is postponed or adjourned to a date more than 120 days after the record date originally fixed for the meeting, in which case a new record date for such meeting shall be determined as set forth herein.

Section 5. STOCK LEDGER. The Corporation shall maintain at its principal office or at the office of its counsel, accountants or transfer agent, an original or duplicate stock ledger containing the name and address of each stockholder and the number of shares of each class held by such stockholder.

Section 6. FRACTIONAL STOCK; ISSUANCE OF UNITS. The Board of Directors may authorize the Corporation to issue fractional shares of stock or authorize the issuance of scrip, all on such terms and under such conditions as it may determine. Notwithstanding any other provision of the charter of the Corporation or these Bylaws, the Board of Directors may authorize the issuance of units consisting of different securities of the Corporation. Any security issued in a unit shall have the same characteristics as any identical securities issued by the Corporation, except that the Board of Directors may provide that for a specified period securities of the Corporation issued in such unit may be transferred on the books of the Corporation only in such unit.

## **ARTICLE VIII**

### **ACCOUNTING YEAR**

The Board of Directors shall have the power, from time to time, to fix the fiscal year of the Corporation by a duly adopted resolution.

## **ARTICLE IX**

### **DISTRIBUTIONS**

Section 1. AUTHORIZATION. Dividends and other distributions upon the stock of the Corporation may be authorized by the Board of Directors, subject to the provisions of law and the charter of the Corporation. Dividends and other distributions may be paid in cash, property or stock of the Corporation, subject to the provisions of law and the charter of the Corporation.

Section 2. CONTINGENCIES. Before payment of any dividend or other distribution, there may be set aside out of any assets of the Corporation available for dividends or other distributions such sum or sums as the Board of Directors may from time to time, in its sole discretion, think proper as a reserve fund for contingencies, for equalizing dividends, for repairing or maintaining any property of the Corporation or for such other purpose as the Board of Directors shall determine, and the Board of Directors may modify or abolish any such reserve.

## ARTICLE X

### SEAL

Section 1. SEAL. The Board of Directors may authorize the adoption of a seal by the Corporation. The seal shall contain the name of the Corporation and the year of its incorporation and the words "Incorporated Maryland". The Board of Directors may authorize one or more duplicate seals and provide for the custody thereof.

Section 2. AFFIXING SEAL. Whenever the Corporation is permitted or required to affix its seal to a document, it shall be sufficient to meet the requirements of any law, rule or regulation relating to a seal to place the word "(SEAL)" adjacent to the signature of the person authorized to execute the document on behalf of the Corporation.

## ARTICLE XI

### INDEMNIFICATION AND ADVANCE OF EXPENSES

Section 1. INDEMNIFICATION OF DIRECTORS AND OFFICERS. The Corporation shall indemnify and advance expenses to its current and former directors and officers to the extent provided by the charter of the Corporation.

Section 2. INDEMNIFICATION OF EMPLOYEES AND AGENTS. With respect to employees and agents who are not officers or directors of the Corporation, the Corporation may, as determined by the Board of Directors, indemnify and advance expenses to such persons to the extent permissible under the Maryland General Corporation Law and the Investment Company Act, as such statutes are now or hereafter in force.

Section 3. OTHER RIGHTS. The indemnification and advancement of expenses provided by this Article XI or provided by the charter of the Corporation shall not be deemed exclusive of any other right, in respect of indemnification, advancement of expenses or otherwise, to which those seeking such indemnification or advancement of expenses may be entitled under any insurance, contract or other agreement, vote of stockholders or directors or otherwise. Neither the amendment nor repeal of this Article XI, nor the adoption or amendment of any other provision of the charter of the Corporation or these Bylaws inconsistent with this Article XI, shall apply to or affect in any respect the applicability of the provisions of this Article XI with respect to any act or failure to act which occurred prior to such amendment, repeal or adoption.

## ARTICLE XII

### WAIVER OF NOTICE

Whenever any notice of a meeting is required to be given pursuant to the charter of the Corporation or these Bylaws or pursuant to applicable law, a waiver thereof in writing or by electronic transmission, given by the person or persons entitled to such notice, whether before or after the

time stated therein, shall be deemed equivalent to the giving of such notice. Neither the business to be transacted at nor the purpose of any meeting need be set forth in the waiver of notice of such meeting, unless specifically required by statute. The attendance of any person at any meeting shall constitute a waiver of notice of such meeting, except where such person attends a meeting for the express purpose of objecting to the transaction of any business on the ground that the meeting has not been lawfully called or convened.

### **ARTICLE XIII**

#### **INVESTMENT COMPANY ACT**

If and to the extent that any provision of the MGCL, including, without limitation, Subtitle 6 and, if then applicable, Subtitle 7, of Title 3 of the MGCL, or any provision of the charter of the Corporation or these Bylaws conflicts with any provision of the Investment Company Act, the applicable provision of the Investment Company Act shall control.

### **ARTICLE XIV**

#### **EXCLUSIVE FORUM FOR CERTAIN LITIGATION**

Section 1. GENERAL. Unless the Corporation consents in writing to the selection of an alternative forum, the Circuit Court for Baltimore City, Maryland, or, if that Court does not have jurisdiction, the United States District Court for the District of Maryland, Northern Division, shall be the sole and exclusive forum for (a) any derivative action or proceeding brought on behalf of the Corporation, (b) any Internal Corporate Claim, as such term is defined in the MGCL, (c) any action asserting a claim of breach of any duty owed by any director, officer, employee or other agent of the Corporation to the Corporation or to the stockholders of the Corporation, (d) any action asserting a claim against the Corporation or any director, officer, employee or other agent of the Corporation arising pursuant to any provision of the MGCL, the charter of the Corporation or these Bylaws, or (e) any other action asserting a claim against the Corporation or any director, officer, employee or other agent of the Corporation that is governed by the internal affairs doctrine. None of the foregoing actions, claims or proceedings may be brought in any court sitting outside the State of Maryland unless the Corporation consents in writing to such court. Notwithstanding the foregoing, this Section 1 does not apply to claims arising under the federal securities laws, or any other claim for which the federal courts have exclusive jurisdiction.

Section 2. FEDERAL SECURITIES LAW CLAIMS. Unless the Corporation consents in writing to the selection of an alternative forum, the federal district courts of the United States of America shall, to the fullest extent permitted by law, be the sole and exclusive forum for the resolution of any complaint asserting a cause of action arising under the federal securities laws.

### **ARTICLE XV**

#### **AMENDMENT OF BYLAWS**

The Board of Directors shall have the exclusive power, at any time, to adopt, alter or repeal any provision of these Bylaws and to make new Bylaws.

## ARTICLE XVI

### CERTAIN ELECTIONS

Section 1. EXEMPTION FROM CONTROL SHARE ACQUISITION ACT. Notwithstanding any other provision of the charter of the Corporation or these Bylaws, Title 3, Subtitle 7 of the MGCL (or any successor statute) shall not apply to any acquisition by Silver Spike Capital, LLC or an affiliate or “associate” (as defined in Section 3-701 of the MGCL or any successor provision) of Silver Spike Capital, LLC of any shares of stock of the Corporation. This Section 1 may be repealed, in whole or in part, at any time, whether before or after an acquisition of “control shares” (as defined in Section 3-701 of the MGCL or any successor provision).

Adopted [●], 2022

**SILVER SPIKE INVESTMENT CORP.**  
**8,928,572 Shares of Common Stock**

**UNDERWRITING AGREEMENT**

[•]

Stifel, Nicolaus & Company, Incorporated  
787 Seventh Avenue, Eleventh Floor  
New York, New York 10019

Piper Sandler & Co.  
1251 Avenue of the Americas, Sixth Floor  
New York, New York 10022

As Representatives of the  
several Underwriters named  
in Schedule A hereto

Dear Sirs and Madams:

Pursuant to the terms and conditions of this Underwriting Agreement (this "Agreement"), Silver Spike Investment Corp., a Maryland corporation (the "Company"), proposes to sell to you, Stifel, Nicolaus & Company, Incorporated ("Stifel"), Piper Sandler & Co. ("Piper") and each of the other underwriters named in Schedule A hereto (collectively, the "Underwriters," which term shall also include any underwriter substituted as hereinafter provided in Section 10 hereof), for whom Stifel and Piper are acting as representatives (in such capacity, the "Representatives"), shares (the "Initial Shares") of the Company's common stock, par value \$0.01 per share (the "Common Stock") in the respective number of shares set forth on Schedule A hereto. The Company also proposes to grant to the Underwriters the option described in Section 1(b) hereof to purchase up to 1,339,286 additional shares of Common Stock from the Company (the "Option Shares" and together with the Initial Shares, the "Shares").

The Company understands that the Underwriters propose to make a public offering of the Shares as soon as the Underwriters deem advisable after this Agreement has been executed and delivered. As used herein, the "Offering" means the offer and sale of the Initial Shares and any Option Shares.

The Company has filed with the Securities and Exchange Commission (the "Commission") a registration statement on Form N-2 (File No. 333-257252) and a related prospectus for the registration of the Shares under the Securities Act of 1933, as amended (the "Securities Act"), and the related rules and regulations of the Commission thereunder (the "Securities Act Rules and Regulations"). The registration statement, as it may have heretofore been amended at the time it became effective, including all documents filed as a part thereof, including the information (if any) deemed to be part of the registration statement at the time of effectiveness pursuant to Rule 430A and Rule 424(b) under the Securities Act, and any post-effective amendment filed pursuant to Rule 462(b) under the Securities Act, is hereinafter referred to as the "Registration Statement"; the prospectus, dated [•], included in the Registration Statement at the time it became effective on [•], (including the information, if any, deemed to be part of the Registration Statement at the time of effectiveness pursuant to Rule 430A and Rule 424(b) under the Securities Act) is hereinafter referred to as the "Preliminary Prospectus"; the prospectus to be filed with

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the Commission pursuant to Rule 424(b) under the Securities Act after the execution and delivery of this Agreement is hereinafter referred to as the “Final Prospectus.”

The Company and the Underwriters agree that up to 10% of the Initial Shares (the “Directed Shares”) shall be reserved for sale by the Underwriters to certain eligible officers, directors, employees, business associates and related persons of the Company and certain related persons (collectively, the “Directed Share Participants”) in a directed share program (the “Directed Share Program”), as part of the distribution of the Shares by the Underwriters, subject to the terms of this Agreement, the applicable rules, regulations and interpretations of the Financial Industry Regulatory Authority, Inc. (“FINRA”) and all other applicable laws, rules and regulations. To the extent that such Directed Shares are not orally confirmed for purchase, and subject to an agreement to purchase, by such eligible officers, directors, employees, business associates and related persons by the end of the first business day after the date of this Agreement, such Directed Shares may be offered to the public as part of the public offering contemplated hereby.

The Company has entered into an Investment Advisory Agreement, dated as of July 27, 2021 (the “Investment Management Agreement”), with Silver Spike Capital, LLC (the “Adviser”), a Delaware limited liability company registered as an investment adviser under the Investment Advisers Act of 1940, as amended, and the rules and regulations thereunder (collectively, the “Advisers Act”). The Company has also entered into an Administration Agreement, dated as of July 27, 2021 (the “Administration Agreement”) with the Adviser to provide administrative services necessary for the Company to operate.

Any “issuer free writing prospectus” (as defined in Rule 433 under the Securities Act) relating to the offering of the Shares contemplated by this Agreement is hereinafter called an “Issuer Free Writing Prospectus.” As used herein, “Road Show” means a “road show” (as defined in Rule 433 under the Securities Act) relating to the offering of the Shares contemplated by this Agreement that is a “written communication” (as defined in Rule 405 under the Securities Act). All references to the Registration Statement, the Preliminary Prospectus, the Final Prospectus, any Issuer Free Writing Prospectus or any amendment or supplement to any of the foregoing shall be deemed to include all exhibits and annexes thereto and the copy filed with the Commission pursuant to its Electronic Data Gathering, Analysis and Retrieval system (“EDGAR”). “Testing-the-Waters Communication” means any oral or written communication with potential investors undertaken in reliance on Section 5(d) of the Securities Act. “Written Testing-the-Waters Communication” means any Testing-the-Waters Communication that is a written communication within the meaning of Rule 405 under the Securities Act. “Permitted Written Testing-the-Waters Communications” means the Written Testing-the-Waters Communications, if any, listed on Schedule B hereto.

The Company hereby confirms that it has authorized the use of the Preliminary Prospectus and the Final Prospectus by the Underwriters in connection with the Offering.

The Company and the Underwriters, as applicable, hereby agree as follows:

**1. Sale and Purchase.**

a. *Initial Shares.* Upon the basis of the representations and warranties and other terms and conditions set forth in this Agreement, the Company agrees to sell and to issue to each Underwriter, severally and not jointly, and each Underwriter, severally and not jointly, agrees to purchase from the Company, at a purchase price of \$14.00 per share (the “Purchase Price”), that number of Initial Shares set forth in Schedule A opposite the name of such Underwriter, plus any additional number of Initial Shares that such Underwriter may become obligated to purchase pursuant to the provisions of Section 10 hereof,

subject, in each case, to such adjustments among the Underwriters as the Representatives, in their sole discretion, shall make to eliminate any sales or purchases of fractional shares.

b. *Option Shares.* Upon the basis of the representations and warranties and other terms and conditions set forth in this Agreement, the Company hereby grants an option to the Underwriters, severally and not jointly, to purchase from the Company up to an additional 1,339,286 shares of Common Stock, as may be necessary to cover overallocments made in connection with the Offering of the Initial Shares, at the Purchase Price per share. The option granted by this Section 1(b) will expire 30 days after the date hereof and may be exercised in whole or in part from time to time in one or more installments, including at the Closing Time (as defined below), upon written notice by the Representatives to the Company setting forth the number of Option Shares as to which the Underwriters are then exercising the option and the time and date of payment for and delivery of such Option Shares in book-entry form. Any such time and date of payment for and delivery of such Option Shares shall be determined by the Representatives, but shall not be later than five (5) full business days, nor earlier than two (2) full business days after the exercise of such option, nor in any event prior to the Closing Time, unless otherwise agreed in writing by the Representatives and the Company (any such date, a "Secondary Closing Date").

c. The Company acknowledges and agrees that the Underwriters may offer and sell Shares to or through any affiliate of an Underwriter.

## 2. **Payment and Delivery.**

a. *Initial Shares.* The closing of the Underwriters' purchase of the Initial Shares shall be held at the office of Ropes & Gray LLP, 1211 Avenue of the Americas, New York, NY 10036 (unless another place shall be agreed upon by the Representatives and the Company). At the closing, subject to the satisfaction or waiver of the closing conditions set forth in this Agreement, payment of the aggregate Purchase Price of the Initial Shares shall be made to the Company by wire transfer of immediately available funds to the bank account designated by the Company against delivery to the Representatives through the facilities of The Depository Trust Company ("DTC") for the respective accounts of the Underwriters of the Initial Shares and Option Shares, if any, to be purchased by them. It is understood that each Underwriter has authorized the Representatives, for its account, to accept delivery of, receipt for, and make payment of the aggregate Purchase Price for, the Initial Shares and Option Shares, if any, which it has agreed to purchase. The Representatives may (but shall not be obligated to) make payment of the purchase price for the Initial Shares or Option Shares, if any, to be purchased by any Underwriter whose funds have not been received by the Closing Time but such payment shall not relieve such Underwriter from its obligations hereunder. Such payment and delivery shall be made at 10:00 a.m., New York City time, on the second (2nd) (third (3rd), if the pricing occurs after 4:30 P.M. (New York City time) on any given day) business day after the date hereof (unless another time, not later than ten (10) business days after such date, shall be agreed to by the Representatives and the Company) (the "Closing Date"). The time at which such payment and delivery are actually made on the Closing Date referred to herein as the "Closing Time."

b. *Option Shares.* The closing of the purchase by the Underwriters of the Option Shares shall occur from time to time (but on no more than three occasions, including at the Closing Time) at the offices of Ropes & Gray LLP, 1211 Avenue of the Americas, New York, NY 10036 (unless another place shall be agreed upon by the Representatives and the Company). On the applicable Secondary Closing Time (as defined below), subject to the satisfaction or waiver of the closing conditions set forth in this Agreement, the Representatives shall pay to the Company the aggregate applicable purchase price for the Option Shares then purchased by the Underwriters at the Secondary Closing Time by wire transfer of immediately available funds against the Company's delivery of the Option Shares. Such payment and

delivery shall be made at 10:00 a.m., New York City time, on each Secondary Closing Time. The Option Shares shall be delivered in book-entry form through the facilities of DTC, in such names and in such denominations as the Representatives shall specify. The time at which payment by the Representatives for and delivery by the Company of any Option Shares are actually made is referred to herein as a “Secondary Closing Time.”

### **3. Representations and Warranties of the Company and the Adviser.**

The Company and the Adviser, jointly and severally, hereby represent and warrant to each Underwriter, as of the date of this Agreement, the Closing Time and any Secondary Closing Time, and agree with each Underwriter, as follows:

a. the Company meets the requirements for use of Form N-2 under the Securities Act and the Securities Act Rules and Regulations; the Registration Statement has been declared effective by the Commission; the Commission has not issued, and is not, to the knowledge of the Company, threatening to issue, any stop order under the Securities Act or other order suspending the effectiveness of the Registration Statement (as amended or supplemented); at the time the Registration Statement became effective and on the date hereof, the Registration Statement complied in all material respects with the requirements of the Securities Act and the Securities Act Rules and Regulations and did not and does not contain an untrue statement of a material fact or omit to state a material fact necessary in order to make the statements therein, in the light of the circumstances under which they were made, not misleading; the Preliminary Prospectus did not, as of its date, and will not, as of the date of any amendment or supplement thereto, contain an untrue statement of a material fact or omit to state a material fact necessary in order to make the statements therein, in the light of the circumstances under which they were made, not misleading; the Disclosure Package (as defined below), as of 4:00 p.m. New York City time on [•] (the “Applicable Time”), or any individual Issuer Free Writing Prospectus when considered together with the Disclosure Package, did not contain an untrue statement of a material fact or omit to state a material fact necessary in order to make the statements therein, in the light of the circumstances under which they were made, not misleading; the Company’s Road Show presentation or materials did not contain an untrue statement of a material fact or omit to state a material fact necessary in order to make the statements therein, in the light of the circumstances under which they were made, not misleading; the Final Prospectus will not, as of its date and at the Closing Time, contain an untrue statement of a material fact or omit to state a material fact necessary in order to make the statements therein, in the light of the circumstances under which they were made, not misleading; *provided, however*, that this representation and warranty shall not apply to any statement in or omission from the Disclosure Package or the Final Prospectus made in reliance upon, and in conformity with, information furnished to the Company in writing by any Underwriter through the Representatives expressly for use therein (that information being limited to that described in the last sentence of Section 9(c) hereof); the Company has complied with each request (if any) from the Commission for additional information; each of the Registration Statement and any post-effective amendment thereto, at the time of its effectiveness and at the time it was filed with the Commission, complied in all material respects with the requirements of the Securities Act and the Securities Act Rules and Regulations; the Preliminary Prospectus, the Final Prospectus and any amendment or supplement thereto, at the time each was filed with the Commission, complied in all material respects with the requirements of the Securities Act and the Securities Act Rules and Regulations and are identical to the electronically transmitted copies thereof filed with the Commission pursuant to EDGAR, except to the extent permitted by Regulation S-T; the documents incorporated or deemed to be incorporated by reference in the Registration Statement, the Disclosure Package and the Final Prospectus, when they became effective or at the time they were or hereafter are filed with the Commission, complied and will comply in all material respects with the requirements of the Securities Exchange Act of 1934, as amended, and the rules and regulations promulgated thereunder (the “Exchange Act”); the “Disclosure



Package” means (i) the Preliminary Prospectus, (ii) any Issuer Free Writing Prospectuses, and (iii) the information contained in Schedule C hereto;

b. all required action has or will have been taken under the Securities Act and the Securities Act Rules and Regulations, the Investment Company Act of 1940, as amended, and the rules and regulations promulgated thereunder (the “Investment Company Act”), and any state securities laws and regulations to make the Offering and the issuance and sale of the Shares by the Company. The provisions of the Company’s articles of incorporation and bylaws (collectively, the “Charter Documents”), and the investment objective, policies and restrictions described in the Disclosure Package and the Final Prospectus comply in all material respects with the requirements of the Investment Company Act; the Common Stock is registered pursuant to Section 12 of the Exchange Act, and the Company has taken no action designed to, or likely to have the effect of, terminating the registration of the Common Stock under the Exchange Act, nor has the Company received any notification that the Commission is contemplating terminating such registration;

c. the Company is a corporation duly incorporated and validly existing and in good standing under the laws of the State of Maryland, with requisite corporate power and authority to (i) own, lease or operate its properties and conduct its business as described in the Disclosure Package and the Final Prospectus; and (ii) execute and deliver this Agreement, and consummate the transactions contemplated hereby (including the sale, issuance, and delivery of the Shares);

d. the execution and delivery of this Agreement by the Company and the consummation by it of the transactions contemplated hereby have been duly authorized by all necessary action on the part of the Company and no further action is required by the Company, the Company’s board of directors or the Company’s stockholders in connection herewith or therewith. This Agreement has been duly executed by the Company and, when delivered in accordance with the terms hereof, will constitute the valid and binding obligation of the Company enforceable against the Company in accordance with its terms, except as the enforcement thereof may be limited by bankruptcy, insolvency, reorganization, moratorium or other similar laws relating to or affecting the rights and remedies of creditors or by general equitable principles and except as rights to indemnity and contribution hereunder may be limited by general equitable principles or federal or state securities laws or public policy underlying such laws;

e. the Company has no subsidiaries;

f. the Company had, as of the applicable date indicated in the Disclosure Package and the Final Prospectus, and will have, as of the Closing Time, the duly authorized capitalization set forth in both the Disclosure Package and the Final Prospectus under the caption “Capitalization,” after giving effect to the adjustments set forth thereunder; all of the issued and outstanding shares of capital stock of the Company have been duly authorized and validly issued, are fully paid and non-assessable, and have not been issued in violation of, or subject to any preemptive right or other similar right of stockholders arising by operation of law, under the Charter Documents, under any agreement to which the Company is a party, or otherwise; except as disclosed in or contemplated by the Disclosure Package and the Final Prospectus, there are no outstanding (i) securities or obligations of the Company convertible into or exchangeable for any capital stock of the Company, (ii) warrants, rights or options to subscribe for or purchase from the Company any such capital stock or any such convertible or exchangeable securities or obligations or (iii) obligations of the Company to issue or sell any such capital stock, any such convertible or exchangeable securities or obligations, or any such warrants, rights or options;

g. the Shares have been duly authorized for sale, issuance, and delivery pursuant to this Agreement, and, when issued and delivered by the Company against payment therefor in accordance with the terms of this Agreement, will be validly issued and fully paid and nonassessable, free and clear of any

lien, encumbrance or claim (each, a "Lien") (other than statutory Liens created by state or federal securities laws restricting the transfer of such equity interests), and the sale, issuance, and delivery of the Shares by the Company pursuant to this Agreement are not subject to any preemptive right, co-sale right, registration right, right of first refusal or other similar right of stockholders arising by operation of law, under the Charter Documents, under any agreement to which the Company is a party, or otherwise; the form of certificates for the Shares, if any, conforms to the corporate law of the jurisdiction of the Company's incorporation and to any requirements of the Charter Documents;

h. the Company has good and valid title to all assets and properties reflected as owned by it in the Disclosure Package and the Final Prospectus (whether through fee ownership, mineral estates or similar rights of ownership), in each case free and clear of any Liens, except such as are disclosed in the Disclosure Package and the Final Prospectus; any real property or personal property held under lease by the Company is held under a lease that is valid, existing and enforceable by the Company, with such exceptions as are disclosed in the Disclosure Package and the Final Prospectus, and the Company has not received any notice of any claim of any sort that has been asserted by anyone adverse to the rights of the Company under any such lease;

i. the Company owns or possesses such licenses or other rights to use all material patents, trademarks, service marks, trade names, copyrights, software and design licenses, trade secrets, other intangible property rights and know-how (collectively "Intangibles") as are necessary to conduct the Company's business as described in the Disclosure Package and the Final Prospectus, except such as are disclosed in the Disclosure Package and the Final Prospectus, and the Company has not received written notice of any infringement of or conflict with (and the Company does not know of any such infringement of or conflict with) asserted rights of others with respect to any Intangibles, which would reasonably be expected to have a Material Adverse Effect (as defined below);

j. the Company has a valid right to access and use all computer systems, networks, hardware, software, databases, websites and equipment used to process, store, maintain and operate data, information and functions used in connection with the business of the Company (the "IT Systems"); the IT Systems are reasonably adequate for, and operate and perform in all material respects as required in connection with, the operation of the business of the Company as currently conducted, free and clear, to the Company's knowledge, of all bugs, errors, defects, Trojan horses, time bombs, malware and other corruptants, except, in each case, as would not reasonably be expected to, individually or in the aggregate, have a material adverse effect on the business, condition (financial or otherwise), management, properties, net assets, results of operations or prospects of the Company, taken as a whole, whether or not arising in the ordinary course of business (a "Material Adverse Effect"). The Company has implemented and maintains commercially reasonable controls, policies, procedures, and safeguards to maintain and protect its material confidential information and the integrity, continuous operation, redundancy and security of all material IT Systems and data (including all personal, personally identifiable, sensitive, confidential or regulated data ("Personal Data")) used in connection with its business, and to the Company's knowledge there have been no breaches, violations, outages or unauthorized uses of or accesses to same, except, in each case, as would not reasonably be expected to, individually or in the aggregate, have a Material Adverse Effect. The Company is presently in material compliance with all applicable laws or statutes and all judgments, orders, rules and regulations of any court or arbitrator or governmental or regulatory authority, internal policies and contractual obligations relating to the privacy and security of IT Systems and Personal Data and to the protection of such IT Systems and Personal Data from unauthorized use, access, misappropriation or modification, except, in each case, as would not reasonably be expected to, individually or in the aggregate, have a Material Adverse Effect;

k. the Company has not violated, or received written notice of any violation with respect to, any law, rule, regulation, order, decree or judgment (each, a "Law") applicable to it and its business,

including those relating to transactions with affiliates, lending, debt collection, notice, privacy, environmental, safety or similar Laws, federal or state Laws relating to discrimination in the hiring, promotion or pay of employees, federal or state wages and hours Laws, the Employee Retirement Income Security Act of 1974, as amended, and the rules and regulations promulgated thereunder ("ERISA"), except for those violations, in each case, as would not reasonably be expected to, individually or in the aggregate, have a Material Adverse Effect;

l. neither the Company nor, to the Company's knowledge, any director, officer, employee, or agent of the Company has (i) used any corporate funds for any unlawful contribution, gift, entertainment or other unlawful expense relating to political activity; (ii) made or taken an act in furtherance of an offer, promise or authorization of any direct or indirect unlawful payment or benefit to any foreign or domestic government official or employee, including of any government-owned or controlled entity or of a public international organization, or any person acting in an official capacity for or on behalf of any of the foregoing, or any political party or party official or candidate for political office; (iii) violated or is in violation of any provision of the Foreign Corrupt Practices Act of 1977, as amended, or any applicable law or regulation thereunder (the "FCPA"), the Bribery Act 2010 of the United Kingdom, or any other applicable anti-bribery or anti-corruption law; or (iv) made any bribe, rebate, payoff, influence payment, kickback or other unlawful payment, or offered, agreed, requested or taken an act in furtherance of any unlawful bribe or other unlawful benefit, including, without limitation, any rebate, payoff, influence payment, kickback or other unlawful or improper payment or benefit. To the knowledge of the Company, its affiliates have conducted their businesses in compliance with the FCPA and have instituted and maintain policies and procedures designed to ensure, and which are reasonably expected to continue to ensure, continued compliance therewith;

m. there are no outstanding loans or advances or guarantees of indebtedness by the Company to or for the benefit of any of the directors, officers, affiliates, or representatives of the Company, or any of the immediate family members of any of them;

n. the Company has not incurred any liability for any finder's fees or similar payments in connection with the transactions contemplated hereby;

o. the Company is not in breach of, or in default under (nor has any event occurred which with notice, lapse of time, or both would constitute a breach of, or default under), (i) any of the Charter Documents, (ii) any obligation, agreement, covenant or condition contained in any material contract, license, indenture, mortgage, deed of trust, bank loan or credit agreement or other agreement or instrument to which the Company is a party or by which it or its assets may be bound or affected, or (iii) any Law applicable to the Company, except, in the case of clause (ii), for such breaches or defaults which would not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect;

p. [Reserved]

q. the execution, delivery and performance by the Company of this Agreement, the consummation by the Company of the transactions contemplated hereby, the compliance by the Company with the terms and provisions hereunder, the sale, issuance, and delivery of the Shares by the Company, and the use of the proceeds from the sale of the Shares as described in the Disclosure Package and the Final Prospectus, will not conflict with, or result in any breach of or constitute a default under (nor constitute any event which with notice, lapse of time, or both would constitute a breach of, or default under), (i) any provision of any of the Charter Documents, (ii) any provision of any material contract, license, indenture, mortgage, deed of trust, bank loan or credit agreement or other agreement or instrument to which the Company is a party or by which it or its assets may be bound or affected, or (iii) any Law issued by any federal, state or local government, regulatory commission, court, administrative

agency or commission, or other governmental body, board, agency, authority or instrumentality of competent jurisdiction (each, a “Governmental Authority”) applicable to the Company, except in the case of clause (ii) for such conflicts, breaches or defaults which have been validly waived or would not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect or result in the creation or imposition of any material lien, charge, claim or encumbrance upon any property or asset of the Company;

r. the Shares and this Agreement conform in all material respects to the descriptions thereof contained in the Disclosure Package and the Final Prospectus;

s. no filing with, or authorization, approval, consent, license, order, registration, qualification or decree of, any Governmental Authority is necessary or required for the performance by the Company of its obligations hereunder, in connection with the offering, issuance or sale of the Shares hereunder or the consummation of the transactions contemplated by this Agreement, except (A) such as have been already obtained or as may be required under the Securities Act, the Securities Act Rules and Regulations, the Investment Company Act, the rules of the Nasdaq Global Select Market, state securities laws or the rules of FINRA and (B) where the failure to obtain any such filing, authorization, approval, consent, license, order, registration, qualification or decree would not reasonably be expected, individually or in the aggregate, to have a Material Adverse Effect;

t. the Company has all necessary licenses, permits, certificates, authorizations, consents and approvals and has made all necessary filings required under any Law (collectively, the “Authorizations”) required in order to conduct its business as described in the Disclosure Package and the Final Prospectus; the Company has complied with the terms of the necessary Authorizations and there are not pending modifications, amendments or revocations of the Authorizations; the Company has paid all fees due to Governmental Authorities pursuant to the Authorizations; all reports required to be filed in connection with the Authorizations have been timely filed and are accurate and complete; and the Company is not in violation of, or in default under, any such Authorizations or any Law issued by a Governmental Authority applicable to the Company, except to the extent that any failure to have, comply with, pay any fees pursuant to, or file any reports in connection with, or violation of or default under any such Authorizations would not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect;

u. there is no outstanding judgment, order, writ, injunction, decree or award of any Governmental Authority or arbitrator affecting the business of the Company, which draws into question the validity of any action taken or to be taken pursuant to this Agreement or in which it is sought to restrain or prohibit or to obtain damages or other relief in connection with this Agreement; there is no litigation, arbitration, investigation or other proceeding of or before any Governmental Authority pending, or, to the knowledge of the Company, threatened in writing, against the Company or any stockholder of the Company;

v. the statements set forth in the Registration Statement, the Disclosure Package and the Final Prospectus under the caption “Description of Our Capital Stock,” insofar as they purport to describe the provisions of the laws and regulations or documents referred to therein, are accurate, complete and fair in all material respects; there are no contracts, agreements or understandings of the Company that are required to be described in or filed as exhibits to the Registration Statement or the Final Prospectus by the Securities Act or by the Securities Act Rules and Regulations that have not been so described, filed or incorporated by reference therein as permitted by the Securities Act Rules and Regulations; the Disclosure Package and the Final Prospectus contain accurate summaries in all material respects of all material contracts, agreements, instruments and other documents of the Company as required by Form N-2 under the Securities Act; the copies of all such contracts, agreements, instruments and other documents

(including all amendments or waivers relating to any of the foregoing) that have been previously furnished to the Underwriters or their counsel are complete and genuine and include all material collateral and supplemental agreements thereto;

w. there are no actions, suits, proceedings, inquiries, examinations or investigations (collectively, “Proceedings”) pending or, to the knowledge of the Company, threatened against the Company, or any of its properties, directors, officers or employees, at law or in equity, or before or by any Governmental Authority that, individually or in the aggregate, if determined adversely to the Company or any of its directors, officers or employees, would reasonably be expected to have a Material Adverse Effect; other than the Underwriters, the Company has not authorized anyone to make any representations regarding the offer and sale of the Shares, or regarding the Company in connection therewith; the Company has not received written notice of any order or decree preventing the use of the Preliminary Prospectus, the Disclosure Package or the Final Prospectus or any amendment or supplement thereto, and no Proceeding for that purpose has commenced or is pending or, to the knowledge of the Company, is contemplated;

x. the Shares have been authorized for listing on the Nasdaq Global Select Market, subject to official notice of issuance or sale of the Shares, as the case may be; the Company is in compliance in all material respects with the requirements of the Nasdaq Global Select Market for continued listing of the Common Stock thereon; the Company has taken no action designed to, or likely to have the effect of, terminating the registration of the Common Stock under the Exchange Act or the listing of the Common Stock on the Nasdaq Global Select Market, nor has the Company received any notification that the Commission or the Nasdaq Global Select Market is contemplating terminating such registration or listing; the transactions contemplated by this Agreement will not contravene the rules or regulations of the Nasdaq Global Select Market;

y. no Issuer Free Writing Prospectus conflicts or will conflict with the information contained in the Registration Statement, the Preliminary Prospectus or the Final Prospectus, including any document incorporated by reference therein, that has not been superseded or modified;

z. subsequent to the date of the Preliminary Prospectus, and except as may be otherwise disclosed in both the Disclosure Package and the Final Prospectus, there has not been (i) any event, circumstance or change in circumstance that, individually or in the aggregate, has or would reasonably be expected to have a Material Adverse Effect, (ii) any transaction, other than in the ordinary course of business, contemplated in any substantive manner or entered into by the Company, (iii) any obligation, contingent or otherwise, directly or indirectly incurred by the Company, other than in the ordinary course of business, (iv) any dividend or distribution of any kind declared, paid or made by the Company on any class of its equity securities, or any purchase by the Company of any of its outstanding equity securities, or (v) any change of the equity securities or indebtedness of the Company;

aa. there are no persons with registration or other similar rights to have any securities registered by the Company under the Securities Act;

bb. the Company has not relied upon the Underwriters or legal counsel for the Underwriters for any legal, tax or accounting advice in connection with the offering and sale of the Shares;

cc. none of the independent directors named in the Disclosure Package and the Final Prospectus has, within the last five years, been employed by or affiliated, directly or indirectly, with the Company, whether by ownership of, ownership interest in, employment by, any material business or professional relationship with, or serving as an officer or director of, the Company or any of its affiliates, other than as disclosed in the Disclosure Package and the Final Prospectus;

dd. (A) At the time of filing the Registration Statement and any post-effective amendment thereto, (B) at the earliest time thereafter that the Company or another offering participant made a bona fide offer (within the meaning of Rule 164(h)(2) of the Securities Act Rules and Regulations) of the Shares and (C) at the Applicable Time, the Company was not and is not an “ineligible issuer,” as defined in Rule 405;

ee. none of the Company or its controlled affiliates (i) is required to register as a “broker” or “dealer” in accordance with the provisions of the Exchange Act, or (ii) directly, or indirectly through one or more intermediaries, controls or has any other association with (within the meaning of Article 1 of the Bylaws of FINRA) any member firm of FINRA;

ff. the Company is insured by insurers of recognized financial responsibility against such losses and risks and in such amounts as are prudent and customary in the businesses in which it is engaged and which the Company reasonably deems adequate; all policies of insurance insuring the Company or its business, assets, employees, officers and directors, including the Company’s directors and officers errors and omissions insurance policy and its fidelity bond required by Rule 17g-1 of the Investment Company Act, are, or as of the Closing Date and each Secondary Closing Date, will be in full force and effect; the Company is, or will be as of the Closing Date and each Secondary Closing Date, in compliance with the terms of such policy and fidelity bond; and there are no claims by the Company under any such policy or fidelity bond as to which any insurance company is denying liability or defending under a reservation of rights clause; the Company has no reason to believe that it will not be able to renew its existing insurance coverage and fidelity bond as and when such coverage and fidelity bond expires or to obtain similar coverage and fidelity bond from similar insurers as may be necessary to continue its business;

gg. neither the Company, nor any affiliates of the Company, has taken, directly, or indirectly, and neither the Company, nor any affiliates of the Company, will take, directly or indirectly, any action designed to cause or result in, or which constitutes or might reasonably be expected to constitute, the stabilization or manipulation of the price of any security of the Company or any “reference security” (as defined in Rule 100 of Regulation M under the Exchange Act) to facilitate the sale or resale of the Shares or otherwise, and has taken no action which would directly or indirectly violate Regulation M under the Exchange Act;

hh. the financial statements of the Company, including the notes and schedules thereto, included in the Disclosure Package and the Final Prospectus have been derived from the accounting records and other books and records of the Company and (i) comply in all material respects with the applicable requirements of the Securities Act, (ii) present fairly in all material respects the financial condition of the Company as of the respective dates thereof, and the results of operations and statements of cash flows for the periods specified, (iii) correctly reflect and disclose all extraordinary items, and (iv) have been prepared in conformity with United States generally accepted accounting principles (“GAAP”) applied on a consistent basis;

ii. BDO USA, LLP, who has certified certain financial statements included in the Preliminary Prospectus and the Final Prospectus, whose report with respect to such financial statements is included in the Preliminary Prospectus and the Final Prospectus, and who has delivered a comfort letter referred to in Section 7(b) hereof, is an independent registered public accountant with respect to the Company within the meaning of the Securities Act, the Securities Act Rules and Regulations, and the Public Company Accounting Oversight Board (United States), as required by the Securities Act for registered offerings;

jj. the Company maintains a system of “internal control over financial reporting” (as such term is defined in Rule 13a-15(f) under the Exchange Act) that complies in all material respects with the requirements of the Exchange Act and is sufficient to provide reasonable assurance that (i) transactions are executed in accordance with management’s general or specific authorizations, (ii) transactions are recorded as necessary to permit preparation of financial statements in conformity with GAAP and to maintain asset accountability, (iii) access to assets is permitted only in accordance with management’s general or specific authorization, and (iv) the recorded accountability for assets is compared with the existing assets at reasonable intervals and appropriate action is taken with respect to any differences. Except as disclosed in both the Disclosure Package and the Final Prospectus, (A) the Company is not aware of any material weaknesses or significant deficiencies (as such terms are defined in Rule 1-02(a)(4) of Regulation S-X under the Securities Act) in the Company’s internal controls over financial reporting, and (B) there has been no change in the Company’s internal controls over financial reporting since the respective dates of the information given in the Disclosure Package and the Final Prospectus that has materially affected, or is reasonably likely to materially affect, the Company’s internal controls over financial reporting;

kk. the operations of the Company and its affiliates are and have been conducted at all times in compliance with applicable financial recordkeeping and reporting requirements of the Currency and Foreign Transactions Reporting Act of 1970, as amended, the Money Laundering Control Act of 1986, as amended, the Bank Secrecy Act, as amended, the United and Strengthening of America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act (USA PATRIOT Act) of 2001, and any other money laundering statutes of all jurisdictions, the rules and regulations thereunder, and any related or similar rules, regulations or guidelines, issued, administered or enforced by any Governmental Authority (collectively, the “Money Laundering Laws”); no action, suit or proceeding by or before any Governmental Authority or any arbitrator involving the Company or any of its affiliates with respect to the Money Laundering Laws is pending or, to the knowledge of the Company, threatened;

ll. none of the Company or, to the knowledge of the Company, the directors, officers, employees, affiliates, or agents of the Company is currently subject to, or a target of, any sanctions administered or enforced by the U.S. government (including, without limitation, Office of Foreign Assets Control of the U.S. Department of the Treasury (“OFAC”) or the U.S. Department of State, and including, without limitation, the designation as a “specially designated national” or “blocked person”); and the Company will not directly or indirectly use the proceeds of the offering of the Shares hereunder, or lend, contribute or otherwise make available such proceeds to any joint venture partner or other person or entity, (i) for the purpose of financing the activities of any person currently subject to any U.S. sanctions administered by OFAC, (ii) to fund or facilitate any activities of or business in any Sanctioned Country (as defined below) in violation of applicable law or (iii) in any other manner that will result in a violation by any person (including any person participating in the transaction, whether as underwriter, advisor, investor or otherwise) of applicable sanctions laws. The Company has not knowingly engaged in, nor is it now knowingly engaged in, any dealings or transactions with any person that at the time of the dealing or transaction is or was the subject or the target of applicable sanctions laws or with any country or territory that is the subject or target of applicable sanctions laws, including, without limitation, Cuba, Iran, North Korea, Sudan, Syria and Crimea (each, a “Sanctioned Country”), except as permitted by applicable law;

mm. the Company is in compliance in all material respects with all presently applicable provisions of ERISA; no “reportable event” (as defined in ERISA) has occurred with respect to any “pension plan” (as defined in ERISA) for which the Company would have any liability; the Company has not incurred and does not expect to incur liability under (i) Title IV of ERISA with respect to termination of, or withdrawal from, any “pension plan” or (ii) Section 412 or 4971 of the Internal Revenue Code of 1986, as amended, including the regulations and published interpretations thereunder (the “Code”); each “pension plan” for which the Company would have any liability that is intended to be qualified under

Section 401(a) of the Code is so qualified and nothing has occurred, whether by action or by failure to act, which would cause the loss of such qualification; and participation by “benefit plan investors” in the Company has at no time been “significant” for purposes of Section 2510.3-101(f) of the Regulations of the U.S. Department of Labor, as modified by Section 3(42) of ERISA;

nn. no labor disturbance by or dispute with employees of the Company exists or, to the knowledge of the Company, is threatened, which would reasonably be expected to result in a Material Adverse Effect;

oo. any certificate signed by any officer of the Company delivered to the Representatives or to counsel for the Underwriters pursuant to or in connection with this Agreement shall be deemed a representation and warranty by the Company to the Underwriters as to the matters covered thereby;

pp. except where such failure to file or pay a tax, assessment, charge or lien would not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect or where such matters are the result of a pending bona fide dispute with taxing authorities, (i) the Company has accurately prepared and timely filed (taking into account any extensions of time within which to file) any and all federal, state, foreign and other tax returns that are required to be filed by them, if any, and have paid or made provision for the payment of all taxes, assessments, governmental or other similar charges, including, without limitation, all sales and use taxes and all taxes which the Company is obligated to withhold from amounts owing to employees, creditors and third parties, with respect to the periods covered by such tax returns (whether or not such amounts are shown as due on any tax return), and (ii) there is no tax Lien, whether imposed by any federal, state, foreign or other taxing authority, outstanding against the assets, properties or business of the Company, other than Liens for taxes not yet due and payable; no deficiency assessment with respect to a proposed adjustment of the Company’s federal, state, local or foreign taxes is pending or, to the knowledge of the Company, threatened; since the date of the most recent audited financial statements, the Company has not incurred any liability for taxes other than in the ordinary course of its business;

qq. except as otherwise disclosed in the Disclosure Package and the Final Prospectus, the Company has no off-balance sheet transactions, arrangements, obligations (including contingent obligations), or any other similar relationships with unconsolidated entities or other persons;

rr. at the Closing Time, the Company will possess, or have the right to use, all of the material assets, tangible and intangible, that it requires to conduct its business as presently conducted, and there are no material assets reasonably necessary for the conduct of its business as presently conducted that will not be transferred, licensed or leased to it as of the Closing Time;

ss. nothing has come to the attention of the Company that has caused the Company to believe that any statistical and market-related data included in each of the Disclosure Package and the Final Prospectus are not based on or derived from sources that the Company reasonably believes are reliable and accurate in all material respects;

tt. no forward-looking statement (within the meaning of Section 27A of the Securities Act and Section 21E of the Exchange Act) contained in any of the Disclosure Package or the Final Prospectus has been made or reaffirmed without a reasonable basis or has been disclosed other than in good faith;

uu. no relationship, direct or indirect, exists between or among the Company, on the one hand, and the directors, officers, stockholders, customers or suppliers of the Company, on the other hand, which would be required by the Securities Act and the Securities Act Rules and Regulations to be



described in a prospectus included in a registration statement on Form N-2 under the Securities Act, which is not so described in the Disclosure Package and the Final Prospectus;

vv. the Company has not entered into any transaction with any person which is required to be disclosed under Item 404 of Regulation S-K under the Securities Act;

ww. the Company intends to direct the investment of the proceeds of the offering described in the Registration Statement, the Preliminary Prospectus and the Final Prospectus in such a manner as to comply with the requirements of Subchapter M of the Code, and the Company is eligible and intends to qualify, and has operated consistent with its qualification, as a regulated investment company (“RIC”) under Subchapter M of the Code;

xx. the Company has elected to be regulated by the Commission as a business development company under the Investment Company Act and has not withdrawn that election, and the Commission has not ordered that such election be withdrawn nor to the best of the Company’s knowledge have proceedings to effectuate such withdrawal been initiated or threatened by the Commission; as of the time of the sale of the Shares and as of the Closing Date, the operations of the Company are in compliance in all material respects with the provisions of the Investment Company Act applicable to business development companies;

yy. the Company has (i) appointed a Chief Compliance Officer and (ii) adopted and implemented written policies and procedures reasonably designed to prevent violation of the Federal Securities Laws (as that term is defined in Rule 38a-1 under the Investment Company Act) by the Company, including policies and procedures that provide oversight of compliance for each administrator and transfer agent of the Company;

zz. this Agreement complies in all material respects with all applicable provisions of the Securities Act, the Securities Act Rules and Regulations, the Investment Company Act and the rules and regulations promulgated thereunder;

aaa. the Company is not required to register as an “investment company” under the Investment Company Act;

bbb. the Company has not distributed and will not distribute, prior to the later of the Closing Date and the completion of the Underwriters’ distribution of the Shares, any offering material in connection with the offering and sale of the Shares other than the Registration Statement, the Preliminary Prospectus contained in the Disclosure Package, the Final Prospectus, any Issuer Free Writing Prospectus reviewed and consented to by the Representatives and included in Schedule C hereto or any electronic road show or other written communications reviewed and consented to by the Representatives and listed on Schedule E hereto;

ccc. the Company (a) has not alone engaged in any Testing-the-Waters Communication other than Testing-the-Waters Communications with the consent of the Representatives with entities that are qualified institutional buyers within the meaning of Rule 144A under the Securities Act or institutions that are accredited investors within the meaning of Rule 501 under the Securities Act, and (b) has not authorized anyone other than the Representatives to engage in Testing-the-Waters Communications. The Company reconfirms that the Representatives have been authorized to act on its behalf in undertaking Testing-the-Waters Communications. The Company has not distributed or approved for distribution any Written Testing-the-Waters Communications other than the Permitted Written Testing-the-Waters Communications;

ddd. as of the Applicable Time, each Permitted Written Testing-the-Waters Communication, as supplemented by and taken together with the Disclosure Package, did not, as of the Applicable Time, include an untrue statement of a material fact or omit to state a material fact necessary in order to make the statements therein, in the light of the circumstances under which they were made, not misleading; and each Permitted Written Testing-the-Waters Communication, if any, does not, as of the date hereof, conflict with the information contained in the Registration Statement, the Preliminary Prospectus, the Disclosure Package, any Issuer Free Writing Prospectus or the Final Prospectus; and the Company has filed publicly on EDGAR at least 15 calendar days prior to any Road Show, any confidentially submitted registration statement and registration statement amendments relating to the offer and sale of the Shares;

eee. all offers and sales of the Company's capital stock and debt or other securities prior to the date hereof were made in compliance with or were the subject of an available exemption from the Securities Act and the Securities Act Rules and Regulations and all other applicable state and federal laws or regulations, or any actions under the Securities Act and the Securities Act Rules and Regulations or any state or federal laws or regulations in respect of any such offers or sales are effectively barred by effective waivers or statutes of limitation;

fff. there is and has been no failure on the part of the Company or any of the Company's directors or officers, in their capacities as such, to comply with any provision of the Sarbanes-Oxley Act and the rules and regulations promulgated in connection therewith, including Section 402 related to loans and Sections 302 and 906 related to certifications;

ggg. from the time of initial confidential submission of the Registration Statement to the Commission (or, if earlier, the first date on which the Company engaged in any Written Testing-the-Waters Communication or any Testing-the-Waters Communication) through the Closing Date or a Secondary Closing Date (if applicable), the Company has been and is an "emerging growth company," as defined in Section 2(a) of the Securities Act (an "Emerging Growth Company");

hhh. the Company has not offered or sold, or caused the Underwriters to offer or sell, any Shares to any person pursuant to the Directed Share Program with the intent to unlawfully influence (i) a customer or supplier of the Company to alter the customer's or supplier's level or type of business with the Company or (ii) a trade journalist or publication to write or publish favorable information about the Company or its products or services;

iii. the individuals set forth on Schedule D hereto have executed and delivered to the Representatives a "lock-up" agreement substantially in the form attached hereto as Exhibit A;

jjj. the Company has not granted, and has no policy or expectation of granting stock options;

kkk. the Company had at the applicable time corporate power and authority to execute and deliver the Investment Management Agreement and the Administration Agreement and to perform its obligations thereunder; and all action required to be taken for the due and proper authorization, execution and delivery by it of each of the Investment Management Agreement and the Administration Agreement and the consummation by it of the transactions contemplated thereby has been duly and validly taken;

lll. the Investment Management Agreement and the Administration Agreement have each been duly authorized, executed and delivered by the Company and are valid and binding obligations of the Company, enforceable against the Company in accordance with their terms, except as enforceability may be limited by applicable bankruptcy, insolvency, reorganization, moratorium or other similar laws relating to or affecting the rights and remedies of creditors or by general equitable principles and except

as rights to indemnity and contribution thereunder may be limited by general equitable principles or federal or state securities laws or public policy underlying such laws; and

mmm. both the Investment Management Agreement and Administration Agreement conform in all material respects to the descriptions thereof contained in the Registration Statement, the Disclosure Package and the Final Prospectus.

#### **4. Representations and Warranties of the Adviser.**

The Adviser represents and warrants to and agrees with each of the Underwriters on behalf of itself that:

a. except as disclosed in the Registration Statement, the Disclosure Package and the Final Prospectus, since the date of the most recent financial statements of the Company included in the Registration Statement, the Disclosure Package and the Final Prospectus, (i) there has not been any material adverse change, or any development that would reasonably be expected to result in a material adverse change, in or affecting the business, properties, management, financial position, stockholders' equity, results of operations or prospects of the Adviser; and (ii) the Adviser has not sustained any loss or interference with its business that is material to the Adviser and that is either from fire, explosion, flood, or other calamity, whether or not covered by insurance, or from any labor disturbance or dispute or any action, order, or decree of any court or arbitrator or governmental or regulatory authority;

b. the Adviser has been duly organized and is validly existing and in good standing under the laws of its jurisdiction of organization, is duly qualified to do business and is in good standing in each jurisdiction in which its ownership or lease of property or the conduct of its business requires such qualification, and has all power and authority necessary to own or hold its properties and to conduct the business in which it is engaged, except where the failure to be so qualified or in good standing or have such power or authority would not reasonably be expected, individually or in the aggregate, to have a material adverse effect on the business, properties, management, financial position, stockholders' equity, results of operations or prospects of the Adviser or on the performance by the Adviser of its obligations under this Agreement (an "Adviser Material Adverse Effect");

c. the Adviser is duly registered with the Commission as an investment adviser under the Advisers Act and the Adviser is not prohibited by the Advisers Act or the Investment Company Act from acting under the Investment Management Agreement as an investment adviser to the Company, as contemplated by the Registration Statement, the Disclosure Package and the Final Prospectus. There does not exist any proceeding or, to the Adviser's knowledge, any facts or circumstances, the existence of which would lead to any proceeding which would reasonably be expected to adversely affect the registration of the Adviser with the Commission;

d. this Agreement has been duly authorized and executed by the Adviser and, when delivered in accordance with the terms hereof, will constitute the valid and binding obligation of the Adviser enforceable against the Adviser in accordance with its terms, except as the enforcement thereof may be limited by bankruptcy, insolvency, reorganization, moratorium or other similar laws relating to or affecting the rights and remedies of creditors or by general equitable principles and except as rights to indemnity and contribution hereunder may be limited by general equitable principles or federal or state securities laws or public policy underlying such laws;

e. the Investment Management Agreement and the Administration Agreement have each been duly authorized, executed and delivered by the Adviser and are valid and binding obligations of the Adviser, enforceable against the Adviser in accordance with their terms, except as enforceability may be

limited by applicable bankruptcy, insolvency, reorganization, moratorium or other similar laws relating to or affecting the rights and remedies of creditors or by general equitable principles and except as rights to indemnity and contribution thereunder may be limited by general equitable principles or federal or state securities laws or public policy underlying such laws;

f. the Adviser is not (i) in violation of its charter or by-laws or similar organizational documents; (ii) in default, and no event has occurred that, with notice or lapse of time or both, would constitute such a default, in the due performance or observance of any term, covenant or condition contained in any indenture, mortgage, deed of trust, loan agreement, or other agreement or instrument to which the Adviser is a party or by which the Adviser is bound or to which any of the property or assets of the Adviser is subject; or (iii) in violation of any law or statute applicable to the Adviser or any judgment, order, rule, or regulation of any court or arbitrator or governmental or regulatory authority having jurisdiction over the Adviser, except, in the case of clauses (ii) and (iii) above, for any such default or violation that would not reasonably be expected, individually or in the aggregate, to have an Adviser Material Adverse Effect;

g. the execution, delivery and performance by the Adviser of this Agreement and the performance by the Adviser of the Investment Management Agreement and the Administration Agreement will not (i) conflict with or result in a breach or violation of any of the terms or provisions of, or constitute a default under, or result in the creation or imposition of any lien, charge, or encumbrance upon any property or assets of the Adviser pursuant to, any indenture, mortgage, deed of trust, loan agreement, or other agreement or instrument to which the Adviser is a party or by which the Company is bound or to which any of the property or assets of the Adviser is subject, (ii) result in any violation of the provisions of the charter or by-laws or similar organizational documents of the Adviser or (iii) result in the violation of any law or statute applicable to the Adviser or any judgment, order, rule, or regulation of any court or arbitrator or governmental or regulatory authority having jurisdiction over the Adviser, except, in the case of clauses (i) and (iii) above, for any such conflict, breach, violation, default, lien, charge or encumbrance that would not reasonably be expected, individually or in the aggregate, to have an Adviser Material Adverse Effect;

h. no filing with, or authorization, approval, consent, license, order, registration, qualification or decree of, any Governmental Authority is necessary or required for the performance by the Adviser of this Agreement or the performance by the Adviser of the Investment Management Agreement and the Administration Agreement, except (A) such as have been already obtained or as may be required under the Securities Act, the Securities Act Rules and Regulations, the Investment Company Act, the rules of the Nasdaq Global Select Market, state securities laws or the rules of FINRA and (B) where the failure to obtain any such filing, authorization, approval, consent, license, order, registration, qualification or decree would not reasonably be expected, individually or in the aggregate, to have an Adviser Material Adverse Effect;

i. there are no Proceedings pending to which the Adviser is or, to the knowledge of the Adviser, may be reasonably expected to become a party or to which any property of the Adviser is or, to the knowledge of the Adviser, may be reasonably expected to become the subject that, individually or in the aggregate, if determined adversely to the Adviser, would reasonably be expected to have an Adviser Material Adverse Effect; no such investigations, actions, suits or proceedings are threatened or, to the knowledge of the Adviser, contemplated by any governmental or regulatory authority or threatened by others, except as would not reasonably be expected, individually or in the aggregate, to have an Adviser Material Adverse Effect; and there are no current or pending legal, governmental, or regulatory actions, suits, or proceedings that are required under the Securities Act to be described in the Registration Statement, the Disclosure Package, or the Final Prospectus that are not so described in the Registration Statement, the Disclosure Package and the Final Prospectus;

j. the Adviser has all Authorizations required in order to conduct its business as described in the Disclosure Package and the Final Prospectus; the Adviser has complied with the terms of the necessary Authorizations and there are not pending modifications, amendments or revocations of the Authorizations; the Adviser has paid all fees due to Governmental Authorities pursuant to the Authorizations; all reports required to be filed in connection with the Authorizations have been timely filed and are accurate and complete; and the Adviser is not in violation of, or in default under, any such Authorizations or any Law issued by a Governmental Authority applicable to the Adviser, except where the failure to possess or make the same would not reasonably be expected, individually or in the aggregate, to have an Adviser Material Adverse Effect; and, except as described in the Registration Statement, the Disclosure Package and the Final Prospectus, the Adviser has not received written notice of any revocation or modification of any such Authorization, and does not have any reason to believe that any such Authorization will not be renewed in the ordinary course, except where such revocation, modification, or non-renewal would not reasonably be expected, individually or in the aggregate, to have an Adviser Material Adverse Effect;

k. the description of the Adviser and its principals and business in the Registration Statement, Disclosure Package and the Final Prospectus do not and will not contain an untrue statement of a material fact or omit to state a material fact required to be stated therein or necessary to make the statements therein, in the light of the circumstances under which they were made, not misleading;

l. the Adviser has the financial resources available to it necessary for the performance of its services and obligations contemplated in the Disclosure Package, the Final Prospectus, and under this Agreement, the Investment Management Agreement and the Administration Agreement;

m. the Adviser maintains a system of internal accounting controls sufficient to provide reasonable assurance that (i) transactions are executed in accordance with its management's general or specific authorization and with the investment objectives, policies and restrictions of the Company and the applicable requirements of the Investment Company Act and the Code; (ii) transactions are recorded as necessary to permit preparation of the Company's financial statements in conformity with GAAP, to calculate net asset value, and to maintain asset accountability, and to maintain material compliance with the books and records requirements under the Investment Company Act; (iii) access to assets of the Company is permitted only in accordance with its management's general or specific authorization; and (iv) the recorded accountability for assets is compared with the existing assets at reasonable intervals and appropriate action is taken with respect to any differences;

n. neither the Adviser nor, to the Adviser's knowledge, any director, officer, agent, employee, or affiliate of the Adviser has (i) used any corporate funds for any unlawful contribution, gift, entertainment or other unlawful expense relating to political activity; (ii) made or taken an act in furtherance of an offer, promise or authorization of any direct or indirect unlawful payment or benefit to any foreign or domestic government official or employee, including of any government-owned or controlled entity or of a public international organization, or any person acting in an official capacity for or on behalf of any of the foregoing, or any political party or party official or candidate for political office; (iii) violated or is in violation of any provision of the FCPA, the Bribery Act 2010 of the United Kingdom, or any other applicable anti-bribery or anti-corruption law; or (iv) made any bribe, rebate, payoff, influence payment, kickback or other unlawful payment, or offered, agreed, requested or taken an act in furtherance of any unlawful bribe or other unlawful benefit, including, without limitation, any rebate, payoff, influence payment, kickback or other unlawful or improper payment or benefit. The Adviser has instituted, maintained, and enforced, and will continue to maintain and enforce, policies and procedures designed to promote and ensure compliance with the FCPA and all other applicable anti-bribery or anti-corruption laws;

o. the operations of the Adviser are and have been conducted at all times in compliance with applicable financial recordkeeping and reporting requirements, including those of the Money Laundering Laws of all jurisdictions having jurisdiction over the Adviser, and no action, suit or proceeding by or before any court or governmental or regulatory agency, authority or body or any arbitrator involving the Adviser with respect to the Money Laundering Laws of all jurisdictions having jurisdiction over the Adviser is pending or, to the knowledge of the Adviser, threatened;

p. neither the Adviser nor, to the knowledge of the Adviser, any of its directors, officers, agents, employees or affiliates is currently the subject or the target of any sanctions, nor is the Adviser located, organized or resident in a Sanctioned Country. Since the inception of the Adviser, the Adviser has not knowingly engaged in, nor is it now knowingly engaged in, any dealings or transactions with any person that at the time of the dealing or transaction is or was the subject or the target of applicable sanctions laws or with any Sanctioned Country;

q. neither the Adviser, nor any affiliates of the Adviser, has taken, directly or indirectly, and neither the Adviser, nor any affiliates of the Adviser, will take, directly or indirectly, any action designed to cause or result in, or which constitutes or might reasonably be expected to constitute, stabilization or manipulation of the price of any security of the Company or any "reference security" (as defined in Rule 100 of Regulation M under the Exchange Act) to facilitate the sale or resale of the Shares or otherwise, and has taken no action which would directly or indirectly violate Regulation M under the Exchange Act;

r. the Adviser is not aware that (i) any of its executives, key employees or significant group of employees plans to terminate employment with the Adviser or (ii) any such executive or key employee is subject to any noncompete, nondisclosure, confidentiality, employment, consulting, or similar agreement that would be violated by either the Adviser's present or proposed business activities, except, in each case, as would not reasonably be expected, individually or in the aggregate, to have an Adviser Material Adverse Effect;

s. no labor disturbance by or dispute with employees of the Adviser exists or, to the knowledge of the Adviser, is threatened, which would reasonably be expected to have an Adviser Material Adverse Effect; and

t. the Adviser has no subsidiaries.

## **5. Certain Covenants of the Company.**

The Company hereby agrees with each Underwriter as follows:

a. The Company, subject to Section 5(b) hereof, shall comply with the requirements of Rule 430A under the Securities Act, and shall notify the Representatives immediately, and confirm the notice in writing, (1) when any post-effective amendment to the Registration Statement shall become effective, or any amendment or supplement to the Final Prospectus shall have been filed, to furnish the Representatives with copies thereof, and to file promptly all material required to be filed by the Company with the Commission pursuant to Rule 433(d) under the Securities Act, (2) of the receipt of any comments from the Commission, (3) of any request by the Commission for any amendment to the Registration Statement or any amendment or supplement to the Final Prospectus or for additional information, (4) of the issuance by the Commission of any stop order suspending the effectiveness of the Registration Statement or of any order preventing or suspending the use of the Preliminary Prospectus, or of the suspension of the qualification of the Shares for offering or sale in any jurisdiction, or of the initiation or threatening of any proceedings for any of such purposes, (5) of any examination pursuant to Section 8(e) of the Securities Act concerning the Registration Statement and (6) if the Company becomes

the subject of a proceeding under Section 8A of the Securities Act in connection with the Offering of the Shares. The Company shall promptly effect the filings necessary pursuant to Rule 424(b) under the Securities Act and shall ascertain promptly whether the form of prospectus transmitted for filing under Rule 424(b) was received for filing by the Commission and, in the event that it was not, it shall promptly file such prospectus. The Company shall use its best efforts to prevent the issuance of any stop order and, if any stop order is issued, to obtain the lifting thereof at the earliest possible moment.

b. During the period when a prospectus relating to the Shares is required by the Securities Act to be delivered (whether physically or through compliance with Rule 172 under the Securities Act or any similar rule), the Company (A) will furnish to the Representatives for review, a reasonable period of time prior to the proposed time of filing of any proposed amendment or supplement to the Registration Statement, a copy of each such amendment or supplement, and (B) will not amend or supplement the Registration Statement without the Representatives' prior written consent. Prior to amending or supplementing the Preliminary Prospectus or the Final Prospectus, the Company shall furnish to the Representatives for review, a reasonable amount of time prior to the time of filing or use of the proposed amendment or supplement, a copy of each such proposed amendment or supplement. The Company shall not file or use any such proposed amendment or supplement without the Representatives' prior written consent. The Company shall file with the Commission within the applicable period specified in Rule 424(b) under the Securities Act any prospectus required to be filed pursuant to such rule.

c. The Company shall furnish to the Representatives for review, a reasonable amount of time prior to the proposed time of filing or use thereof, a copy of each proposed Issuer Free Writing Prospectus or any amendment or supplement thereto prepared by or on behalf of, used by, or referred to by the Company, and the Company shall not file, use or refer to any proposed Issuer Free Writing Prospectus or any amendment or supplement thereto without the Representatives' prior written consent. The Company shall furnish to the Representatives, without charge, as many copies of any Issuer Free Writing Prospectus prepared by or on behalf of, used by or referred to by the Company as the Representatives may reasonably request. If at any time when a prospectus is required by the Securities Act to be delivered (whether physically or through compliance with Rule 172 under the Securities Act or any similar rule) in connection with sales of the Shares (but in any event if at any time through and including the Closing Date) there occurred or occurs an event or development as a result of which any Issuer Free Writing Prospectus prepared by or on behalf of, used by, or referred to by the Company conflicted or could conflict with the information contained in the Registration Statement, the Preliminary Prospectus or the Final Prospectus or included or could include an untrue statement of a material fact or omitted or could omit to state a material fact necessary in order to make the statements therein, in the light of the circumstances prevailing at such time, not misleading, the Company shall promptly amend or supplement such Issuer Free Writing Prospectus to eliminate or correct such conflict so that the statements in such Issuer Free Writing Prospectus as so amended or supplemented will not include an untrue statement of a material fact or omit to state a material fact necessary in order to make the statements therein, in the light of the circumstances prevailing at such time, not misleading, as the case may be; provided, that prior to amending or supplementing any such Issuer Free Writing Prospectus, the Company shall furnish to the Representatives for review, a reasonable amount of time prior to the proposed time of filing or use thereof, a copy of such proposed amended or supplemented Issuer Free Writing Prospectus, and the Company shall not file, use or refer to any such amended or supplemented Issuer Free Writing Prospectus without the Representatives' prior written consent.

d. The Company shall furnish such information as may be required and otherwise to cooperate in qualifying the Shares for offer and sale under the securities or blue sky laws of such states and other jurisdictions as the Representatives may reasonably designate, or as required for the Offering to maintain such qualifications in effect as long as required by such Laws for the distribution of the Shares; *provided, however*, that the Company shall not be required to qualify as a foreign corporation or other

foreign entity or to consent to the service of process under the Laws of, or subject itself to taxation as doing business in, any such state or other jurisdiction (except service of process with respect to the offering and sale of the Shares).

e. The Company shall furnish or deliver to the Underwriters, without charge, signed copies of the Registration Statement as originally filed and of each amendment thereto (including exhibits filed therewith or incorporated by reference therein) and signed copies of all consents and certificates of experts, and will also, upon request, deliver to the Underwriters, without charge, a conformed copy of the Registration Statement as originally filed and of each amendment thereto (without exhibits). The copies of the Registration Statement and each amendment thereto furnished to the Underwriters shall be identical to the electronically transmitted copies thereof filed with the Commission pursuant to EDGAR, except to the extent permitted by Regulation S-T.

f. The Company shall deliver to the Underwriters, without charge, as many written and electronic copies of the Preliminary Prospectus and the Final Prospectus as the Underwriters reasonably request, and the Company hereby consents to the use of such copies for purposes permitted by the Securities Act. The Company shall furnish to the Underwriters, without charge, prior to 5:00 p.m., New York City time, on the business day next succeeding the date of this Agreement and from time to time thereafter during the period when the Final Prospectus is required to be delivered in connection with sales of the Shares under the Securities Act or the Exchange Act or in lieu thereof, the notice referred to in Rule 173(a) under the Securities Act, such number of written and electronic copies of the Final Prospectus (as amended or supplemented) as the Underwriters may reasonably request. The Final Prospectus and any amendments or supplements thereto furnished to the Underwriters shall be identical to the electronically transmitted copies thereof filed with the Commission pursuant to EDGAR, except to the extent permitted by Regulation S-T.

g. If at any time following the distribution of any Permitted Written Testing-the-Waters Communication there occurred or occurs an event or development as a result of which such Permitted Written Testing-the-Waters Communication included or would include an untrue statement of a material fact or omitted or would omit to state a material fact necessary in order to make the statements therein, in the light of the circumstances existing at that subsequent time, not misleading, the Company shall promptly notify the Representatives and shall promptly amend or supplement, at its own expense, such Permitted Written Testing-the-Waters Communication to eliminate or correct such untrue statement or omission.

h. The Company shall advise the Representatives promptly, confirming such advice in writing, of: (i) the happening of any event known to the Company which, in the judgment of the Company in consultation with its legal counsel, would require the making of any change in the Final Prospectus then being used so that the Final Prospectus would not include an untrue statement of a material fact or omit to state a material fact necessary to make the statements therein, in the light of the circumstances under which they are made, not misleading; and (ii) the receipt of any notification with respect to the modification, rescission, withdrawal or suspension of the qualification of the Shares, or of any exemption from such qualification or from registration of the Shares, for offering or sale in any jurisdiction, or of the initiation or threatening of any proceedings for any of such purposes, and, if any Governmental Authority should issue any such order, the Company shall use its commercially reasonable efforts to obtain the lifting or removal of such order as soon as possible.

i. The Company shall apply the net proceeds from the sale of the Shares in the manner set forth under the caption "Use of Proceeds" in both the Disclosure Package and the Final Prospectus.



- j. The Company shall engage and use its commercially reasonable efforts to maintain, at its expense, a registrar and transfer agent for the Shares.
- k. The Company shall use its commercially reasonable efforts to effect and maintain the listing of the Common Stock (including the Shares) on the Nasdaq Global Select Market.
- l. The Company shall not take, and shall use its best efforts to ensure that no affiliate of the Company will take, directly or indirectly, any action designed to cause or result in or which constitutes or might reasonably be expected to constitute stabilization or manipulation of the price of the Shares or any reference security with respect to the Shares, whether to facilitate the sale or resale of the Shares or otherwise, and the Company shall, and shall cause each of its affiliates to, comply with all applicable provisions of Regulation M.
- m. The Company shall make generally available (within the meaning of Section 11(a) of the Securities Act) to its security holders and to the Underwriters as soon as practicable after the end of its fiscal quarter in which the first anniversary date of the effective date of the Registration Statement occurs, an earnings statement (in form complying with the provisions of Rule 158 under the Securities Act and satisfying the provisions of Section 11(a) of the Securities Act) covering a period of at least 12 consecutive months beginning after the effective date of the Registration Statement; provided that the Company will be deemed to have complied with such request by filing such an earnings statement on EDGAR.
- n. The Company shall pay all expenses, fees and taxes in connection with: (i) the preparation, printing and filing with the Commission of each Preliminary Prospectus, the Disclosure Package, the Final Prospectus, any Issuer Free Writing Prospectus, any Permitted Written Testing-the-Waters Communication, and any amendments or supplements thereto, and the printing and furnishing of copies of each thereof to the Underwriters (including costs of mailing and shipment) and the filing thereof with the Commission; (ii) the preparation, sale, issuance and delivery of the Shares, including any stock or other transfer taxes or duties payable upon the sale of the Shares to the Underwriters; (iii) the printing of this Agreement and any dealer agreements, and the reproduction and/or printing and furnishing of copies of each thereof to dealers (including costs of mailing and shipment); (iv) the registration of the Shares with the Commission for offering and sale and the registration and/or qualification of the Shares for offering and sale under state Laws and the determination of their eligibility for investment under state Law as aforesaid (including all filing fees and the reasonable fees and expenses incurred in connection with any filing with, and clearance of the offering by, FINRA, and any fees and disbursements of the Underwriters' counsel in connection therewith in an amount up to \$20,000), and the printing and furnishing of copies of any blue sky surveys or legal investment surveys to the Underwriters and to dealers; (v) all fees and disbursements of counsel and accountants for the Company; (vi) the fees and expenses of the transfer agent and registrar for the Common Stock; (vii) costs of background investigations in an amount up to \$100,000; (viii) the reasonable costs and expenses incurred by the Company in connection with the marketing of the Shares, including all reasonable and documented "out of pocket" expenses, Road Show costs and expenses (regardless of the form in which the Road Show is conducted), expenses related to any Permitted Written Testing-the-Waters Communication or any Testing-the-Waters Communication, and expenses of personnel of the Company, including but not limited to commercial or charter air travel, local hotel accommodations and transportation; *provided, however*, that the Underwriters shall be responsible for 50% of the third-party costs of any chartered private aircraft incurred in connection with the Road Show; (ix) the fees and expenses incurred in connection with listing the Shares on the Nasdaq Global Select Market; (x) the fees and expenses of the Custodian; (xi) the fees and expenses of the Underwriters in connection with matters relating to the Directed Shares, including reasonable fees and disbursements of counsel for the Underwriters in an amount up to \$20,000; (xii) the costs and expenses incurred by the Underwriters in connection with the

printing (or reproduction) and delivery (including postage, air freight charges and charges for counting and packaging) of copies of information or materials relating to the Directed Shares; (xiii) stamp duties, similar taxes or duties or other taxes, if any, incurred by the Underwriters in connection with the Directed Shares; and (xiv) the performance by the Company of the Company's other obligations hereunder. It is, however, understood that except as provided in this paragraph or in [Section 8](#) or [Section 9](#) of this Agreement, the Underwriters shall pay all of their own costs and expenses, including, without limitation, the fees and disbursements of their counsel, any advertising expenses connected with any offers they make and 50% of the costs of any chartered private aircraft incurred in connection with the Road Show and all travel, lodging and other expenses of the Underwriters incurred by them in connection with the Road Show.

o. The Company shall use commercially reasonable efforts in cooperation with the Representatives to obtain permission for the Shares to be eligible for clearance and settlement through DTC.

p. For a period of 180 days after the date of the Final Prospectus (the "[Lock-Up Period](#)"), the Company shall not, without the prior consent of the Representatives, directly or indirectly: (i) offer, pledge, sell, contract to sell, sell any option or contract to purchase, purchase any option or contract to sell, grant any option, right or warrant to purchase, lend or otherwise transfer or dispose of any shares of Common Stock or preferred stock or other capital stock (collectively, "[Capital Stock](#)") or any securities convertible into, exchangeable for or that represent the right to receive Common Stock or other Capital Stock (except pursuant to registrations on Form S-8 or Form N-14 or any similar or successor form), whether now owned or hereafter acquired by the Company or with respect to which the Company has or hereafter acquires the power of disposition; or (ii) enter into any swap or other agreement, arrangement or transaction that transfers to another, in whole or in part, directly or indirectly, any of the economic consequences of ownership of any Common Stock or other Capital Stock or any securities convertible into or exercisable or exchangeable for any Common Stock or other Capital Stock. This paragraph shall not apply to any shares of Common Stock issued pursuant to any dividend reinvestment plan referred to in the Registration Statement, the Disclosure Package and the Final Prospectus.

q. During the Lock-Up Period, the Company shall enforce all agreements between the Company and any of its security holders that restrict or prohibit, expressly or in operation, the offer, sale or transfer of shares of Common Stock or securities convertible into or exchangeable or exercisable for any shares of Common Stock, or any of the other actions restricted or prohibited under the terms of the form of "lock-up" agreement attached hereto as [Exhibit A](#). In addition, the Company shall direct the transfer agent to place stop transfer restrictions upon any such securities of the Company that are bound by such "lock-up" agreements for the duration of the periods contemplated in such agreements, including, without limitation, "lock-up" agreements entered into pursuant to [Section 7\(r\)](#) hereof.

r. [Reserved]

s. The Company shall comply with the Securities Act and the Exchange Act so as to permit the completion of the distribution of the Shares as contemplated by this Agreement, the Registration Statement, the Disclosure Package and the Final Prospectus. Without limiting the generality of the foregoing, the Company shall, during the period when a prospectus relating to the Shares is required by the Securities Act to be delivered (whether physically or through compliance with Rule 172 under the Securities Act or any similar rule), file on a timely basis with the Commission and the Nasdaq Global Select Market all reports and documents required to be filed under the Exchange Act.

t. The Company shall furnish to the Representatives, during the period referred to in [Section 5\(b\)](#), not fewer than two (2) business days before filing with the Commission, a copy of the most

current draft at such time of any document proposed to be filed with the Commission pursuant to Section 13, Section 14 or Section 15(d) of the Exchange Act.

u. The Company represents and agrees that, without the prior consent of the Representatives, it has not made and shall not make any offer relating to the Shares that could constitute an Issuer Free Writing Prospectus; any such Issuer Free Writing Prospectus the use of which has been consented to by the Company and the Representatives is listed on Schedule C hereto.

v. The Company has complied and shall comply with the requirements of Rule 433 under the Securities Act applicable to any Issuer Free Writing Prospectus, including timely filing with the Commission or retention where required and legending; the Company represents that it has satisfied and agrees that it shall satisfy the conditions under Rule 433 under the Securities Act to avoid a requirement to file with the Commission any electronic "road show" (as defined in Rule 433 under the Securities Act).

w. The Company shall not take any action that would prevent the Underwriters from purchasing the Company's equity securities in the secondary market to cover short positions entered into pursuant to the Underwriter's market facilitation activities in connection with the transactions contemplated hereunder.

x. For a period of five (5) years following the Closing Date, the Company shall furnish as soon as practicable to the Representatives at Stifel, Nicolaus & Company, Incorporated, 787 7th Avenue, 11th Floor, New York, NY 10019, Attention: Capital Markets; and Piper Sandler & Co., 1251 Avenue of the Americas, 6th Floor, New York, New York 10020, to the extent not furnished or filed with the Commission, copies of all reports or other communications (financial or other) furnished generally to holders of its securities, copies of any reports and financial statements furnished to or filed with the Commission or any national securities exchange on which any class of securities of the Company is listed and such additional information concerning the business and financial condition of the Company as the Representatives may from time to time reasonably request (such financial statements to be on a consolidated basis to the extent the accounts of the Company and any subsidiaries of the Company are consolidated in reports furnished to its stockholders generally or to the Commission).

y. The Company shall have in place and maintain a system of internal accounting controls sufficient to provide reasonable assurance that (i) transactions are executed in accordance with management's general or specific authorizations, (ii) transactions are recorded as necessary to permit preparation of financial statements in conformity with GAAP and to maintain asset accountability, (iii) access to assets is permitted only in accordance with management's general or specific authorization, and (iv) the recorded accountability for assets is compared with the existing assets at reasonable intervals, and appropriate action is taken with respect to any differences.

z. The Company and any subsidiaries of the Company shall comply with all effective applicable provisions of the Sarbanes-Oxley Act of 2002.

aa. The Company will promptly notify the Representatives if the Company ceases to be an Emerging Growth Company at any time prior to (i) the completion of the distribution of Shares within the meaning of the Securities Act and (ii) completion of the 180-day restricted period referred to in Section 5(p) hereof.

bb. For a period of at least two (2) years from the Closing Date, the Company shall maintain its status as a business development company under the Investment Company Act; provided, however, the Company may change the nature of its business so as to cease to be, or to withdraw its election as, a

business development company, with the approval of its board of directors and a vote of stockholders as required by Section 58 of the Investment Company Act or any successor provision.

cc. The Company shall conform with the applicable requirements to maintain in effect its qualification and election to be treated as a RIC under Subchapter M of the Code for so long as the Company is a business development company under the Investment Company Act.

dd. The Company will retain qualified accountants and qualified tax experts to (i) test procedures and conduct annual compliance reviews designed to determine compliance with the regulated investment company provisions of the Code and (ii) otherwise assist the Company in monitoring appropriate accounting systems and procedures designed to determine compliance with the regulated investment company provisions of the Code.

ee. If so requested by an Underwriter, the Company shall cause to be prepared and delivered, at its expense, within one business day from the effective date of this Agreement, to the Underwriters an “electronic Prospectus” to be used by the Underwriters in connection with the offering and sale of the Shares. As used herein, the term “electronic Prospectus” means a form of Preliminary Prospectus, Issuer Free Writing Prospectus or Final Prospectus, and any amendment or supplement thereto, that meets each of the following conditions: (A) it shall be encoded in an electronic format, satisfactory to the Underwriters, that may be transmitted electronically by the Underwriters to offerees and purchasers of the Shares, (B) it shall disclose the same information as such paper Preliminary Prospectus, Issuer Free Writing Prospectus or Final Prospectus, as the case may be, and (C) it shall be in or convertible into a paper format or an electronic format, satisfactory to the Underwriters, that will allow investors to store and have continuously ready access to such Preliminary Prospectus, Issuer Free Writing Prospectus or Final Prospectus at any future time, without charge to investors (other than any fee charged for subscription to the Internet generally). The Company hereby confirms that, if so requested by the Underwriters, it has included or will include in the Final Prospectus filed with the Commission an undertaking that, upon receipt of a request by an investor or his or her representative, the Company shall transmit or cause to be transmitted promptly, without charge, a paper copy of such paper Preliminary Prospectus, Issuer Free Writing Prospectus or Final Prospectus to such investor or representative.

ff. The Company shall use its best efforts to ensure that the Directed Shares will be restricted as required by FINRA or FINRA rules from sale, transfer, assignment, pledge or hypothecation for a period of three months following the date of this Agreement. The Underwriters will notify the Company as to which persons, if any, will need to be so restricted. At the request of the Underwriters, the Company shall direct the transfer agent to place a stop transfer restriction upon such securities for such period of time. Should the Company release, or seek to release, from such restrictions any of the Directed Shares, the Company shall reimburse the Underwriters for any reasonable expenses (including, without limitation, legal expenses) they incur in connection with, or as a result of, such release.

gg. The Company shall comply with all applicable securities and other applicable laws, rules and regulations in each jurisdiction in which the Directed Shares are offered in connection with the Directed Share Program, and shall ensure that any material prepared by the Company for distribution to Directed Share Participants in connection with the Directed Share Program will comply with such laws, rules and regulations.

6. [Reserved]

7. **Conditions of the Underwriters' Obligations.**

The obligations of each Underwriter hereunder are subject to (i) the accuracy of the representations and warranties on the part of the Company and the Adviser on the date hereof, at the Closing Time and any Secondary Closing Time, as applicable, (ii) the accuracy of the statements of the Company's officers made in any certificate pursuant to the provisions hereof as of the date of such certificate, (iii) the performance by the Company of all of its covenants and other obligations hereunder in all material respects, and (iv) the following other conditions:

a. The Company and the Adviser shall have furnished to the Representatives on the Closing Date and any Secondary Closing Date, as applicable, the opinion and negative assurance letter of Davis Polk & Wardwell LLP, counsel to the Company and the Adviser, addressed to the Underwriters and dated the Closing Date and any Secondary Closing Date, as applicable, in substantially the form attached hereto as Exhibit B. Such opinion and negative assurance letter shall indicate that they are being rendered to the Underwriters pursuant to the terms of this Agreement.

b. The Underwriters shall have received from BDO USA, LLP (i) on the date hereof, a "comfort" letter dated the date hereof, and (ii) on the Closing Date, a "bring down" comfort letter, dated the Closing Date and any Secondary Closing Date, as applicable, relating to the matters covered in the comfort letter referred to in clause (i) above. Each comfort letter shall be addressed to the Underwriters and the board of directors of the Company and shall be in form and substance reasonably satisfactory to the Underwriters; provided, that the letter delivered on the Closing Date and any Secondary Closing Date, as the case may be, shall use a "cut-off" date no more than three (3) business days prior to the Closing Date or the Secondary Closing Date, as the case may be.

c. The Underwriters shall have received on the Closing Date and any Secondary Closing Date, as applicable, a favorable opinion and negative assurance letter of Ropes & Gray LLP, counsel to the Underwriters, dated the Closing Date and any Secondary Closing Date, as applicable, in form and substance satisfactory to the Underwriters.

d. The Representatives shall have received on and as of the Closing Date and on any Secondary Closing Date, as the case may be, reasonably satisfactory evidence of the good standing of the Company in its jurisdiction of organization and its good standing as a foreign entity in such other jurisdictions as the Representatives may reasonably request, in each case in writing from the appropriate governmental authorities of such jurisdictions.

e. Prior to the Closing Time and any Secondary Closing Date, as applicable, (i) no action shall have been taken and no statute, rule, regulation, or order shall have been enacted, adopted, or issued by any federal, state, or foreign governmental or regulatory authority that would, as of the Closing Date or as of any Secondary Closing Date, as the case may be, prevent the issuance and sale of the Shares, (ii) no suspension of the qualification of the Shares for offering or sale in any jurisdiction, or of the initiation or threatening of any proceedings for any of such purposes, shall have occurred, and (iii) neither the Disclosure Package nor the Final Prospectus, together with any amendments or supplements thereto, or any modifications thereof, shall contain an untrue statement of material fact or omit to state a material fact necessary to make the statements therein, in the light of the circumstances under which they are made, not misleading.

f. Between the time of execution of this Agreement and the Closing Time and any Secondary Closing Date, as applicable, (i) no event, circumstance or change constituting a Material

Adverse Effect shall have occurred or become known, (ii) no transaction which is material to the Company shall have been entered into by the Company that has not been fully and accurately disclosed in both the Disclosure Package and the Final Prospectus, as modified by any amendment or supplement thereto, and (iii) no order or decree preventing the use of any of the Preliminary Prospectus, the Disclosure Package or the Final Prospectus, or any amendment or supplement thereto, or any order asserting that any of the transactions contemplated by this Agreement are subject to the registration requirements of the Securities Act shall have been issued.

g. The Company shall have delivered to the Representatives a certificate, dated the Closing Date and any Secondary Closing Date, as applicable, executed by the secretary of the Company on behalf of the Company, as to (i) the resolutions adopted by the Company's board of directors in respect of the Offering in form and substance reasonably acceptable to the Representatives and (ii) the Charter Documents, each as in effect as of the Closing Date.

h. The Company shall have delivered to the Representatives a certificate, dated the Closing Date and any Secondary Closing Date, as applicable, executed by its chief executive officer and chief financial officer, to the effect that: (i) the representations and warranties of the Company set forth in this Agreement are true and correct as of the Closing Date and any Secondary Closing Date, as applicable, as though made on and as of such date (except to the extent that such representations and warranties speak as of another date, in which case such representations and warranties shall be true and correct as of such other date); (ii) the conditions set forth in Section 7(e) and Section 7(f) hereof shall have been satisfied and be true and correct as of the Closing Date and any Secondary Closing Date, as applicable; (iii) the Company has complied with all covenants and agreements and satisfied all conditions on its part to be performed or satisfied under this Agreement at or prior to the Closing Date and any Secondary Closing Date, as applicable; and (iv) no stop order suspending the effectiveness of the Registration Statement has been issued and no proceedings for that purpose have been instituted or, to their knowledge, threatened.

i. [Reserved]

j. [Reserved]

k. The Shares to be delivered on the Closing Date or Secondary Closing Date, as the case may be, shall have been approved for listing on the Nasdaq Global Select Market, subject to official notice of issuance.

l. The Final Prospectus shall have been filed with the Commission pursuant to Rule 424(b) under the Securities Act within the applicable time period prescribed for such filing by the Securities Act and in accordance with Section 5(a) hereof; all material required to be filed by the Company pursuant to Rule 433(d) under the Securities Act shall have been filed with the Commission within the applicable time period prescribed for such filing by Rule 433 under the Securities Act; the Registration Statement has become effective and no stop order suspending the effectiveness of the Registration Statement or any part thereof or the Final Prospectus or any part thereof or any Issuer Free Writing Prospectus shall have been issued and no proceeding for that purpose shall have been initiated or threatened by the Commission or any state securities commission; and all requests for additional information on the part of the Commission shall have been complied with to the Representatives' reasonable satisfaction.

m. Subsequent to the execution and delivery of this Agreement and prior to the Closing Date or the Secondary Closing Date, as the case may be, there shall not have occurred any downgrading, nor shall any notice have been given of (i) any downgrading, (ii) any intended or potential downgrading, or (iii) any review or possible change that does not indicate an improvement, in the rating accorded any

securities of or guaranteed by the Company by any “nationally recognized statistical rating organization,” as such term is defined for purposes of Rule 436(g)(2) under the Securities Act.

n. The Common Stock has been registered pursuant to Section 12(b) of the Exchange Act, and the Company has taken no action designed to, or likely to have the effect of, terminating the registration of the Common Stock under the Exchange Act, nor has the Company received any notification that the Commission is contemplating terminating such registration.

o. FINRA shall have confirmed that it has not raised any objection with respect to the fairness and reasonableness of the underwriting terms and conditions.

p. The Company shall have furnished to the Representatives such other documents and certificates as to the accuracy and completeness of any statement in both the Disclosure Package and the Final Prospectus, or any amendment or supplement thereto, and any additional matters as the Representatives may reasonably request, as of the Closing Time and any Secondary Closing Time, as applicable.

q. [Reserved]

r. At the date of this Agreement, the Representatives shall have received an executed “lock-up” agreement substantially in the form attached hereto as Exhibit A signed by the persons set forth on Schedule D hereto.

s. [Reserved]

All opinions, letters, certificates and evidence mentioned above or elsewhere in this Agreement shall be deemed to be in compliance with the provisions hereof only if they are in form and substance reasonably satisfactory to counsel for the Underwriters.

## **8. Termination.**

a. The obligations of the Underwriters hereunder shall be subject to termination in the absolute discretion of the Representatives at any time prior to the Closing Time or any Secondary Closing Time, as applicable, if (i) any of the conditions specified in Section 7 hereof shall not have been fulfilled in all material respects when and as required by this Agreement to be fulfilled, (ii) trading in securities in general on the New York Stock Exchange or the Nasdaq Global Select Market shall have been suspended or minimum prices shall have been established on such exchange or quotation system, (iii) there has been a material disruption in the securities settlement, payment or clearance services in the United States, (iv) additional material governmental restrictions, not in force on the date of this Agreement, have been imposed upon the sale or trading in securities, (v) a banking moratorium shall have been declared either by the United States or New York State authorities, (vi) any outbreak or escalation of hostilities or other calamity, terrorist activity, crises or any change or development involving a prospective change in national or international political, financial, economic or other conditions or (vii) declaration by the United States of a national emergency or war or other calamity shall have occurred, the effect of any of which is such as to make it, in the sole judgment of the Representatives, impracticable or inadvisable to market the Shares on the terms and in the manner contemplated by the Agreement.

b. The respective indemnities, agreements, representations, warranties and other statements of the Company or its officers and of the Underwriters set forth in or made pursuant to this Agreement will remain in full force and effect regardless of any investigation or statement as to the results thereof, made by or on behalf of the Underwriters, the Company, or any of their respective representatives,

officers or directors or any controlling person, and will survive any termination of this Agreement and the delivery of and payment for the Shares. If the purchase of the Shares by the Underwriters is not consummated for any reason other than solely because of (i) a material default of the Underwriters' obligations hereunder or (ii) the termination of this Agreement pursuant to Section 8(a)(ii), Section 8(a)(iii), Section 8(a)(iv), Section 8(a)(v), Section 8(a)(vi) or Section 8(a)(vii), the Company shall reimburse the Underwriters for all out-of-pocket expenses (including fees and disbursements of counsel) reasonably incurred by the Underwriters in connection with the offering of the Shares and the other transactions hereunder, and the respective obligations of the Company and the Underwriters pursuant to Section 9 hereof shall also remain in effect. In addition, if any Shares have been purchased hereunder, the representations and warranties in Section 3 and Section 4 and all obligations under Section 5 shall remain in effect.

## 9. Indemnity.

a. The Company and the Adviser, jointly and severally, agree to indemnify, defend and hold harmless each Underwriter and its affiliates, and their respective directors, officers, partners, members, employees, representatives and agents, and any person who controls an Underwriter within the meaning of Section 15 of the Securities Act or Section 20 of the Exchange Act, from and against any loss, expense, liability, damages or claim (or actions in respect thereof) (including without limitation, reasonable attorneys' fees and any and all reasonable expenses whatsoever incurred in investigating, preparing or defending against any litigation, commenced or threatened, or any claim whatsoever, and any and all amounts paid in settlement of any claim or litigation) which, jointly or severally, an Underwriter or any such controlling person may incur under the Securities Act, the Exchange Act or otherwise, insofar as such loss, expense, liability, damages or claim arises out of or is based upon: (i) any untrue statement or alleged untrue statement of a material fact contained in the Preliminary Prospectus, the Disclosure Package, any Issuer Free Writing Prospectus, the Company's Road Show presentation or materials or the Final Prospectus, or arises out of or is based upon any omission or alleged omission to state a material fact necessary to make the statements made therein, in the light of the circumstances under which they were made, not misleading, except insofar as such loss, expense, liability or claim arises out of or is based upon any untrue statement, alleged untrue statement, omission or alleged omission of a material fact contained in and in conformity with information furnished in writing by an Underwriter through the Representatives to the Company expressly for use in the Preliminary Prospectus, the Disclosure Package, any Issuer Free Writing Prospectus, the Company's Road Show presentation or materials or the Final Prospectus (that information being limited to that described in the last sentence of Section 9(c) hereof); (ii) any untrue statement or alleged untrue statement of a material fact contained in any material prepared by or with the consent of the Company for distribution to Directed Share Participants in connection with the Directed Share Program or any omission or alleged omission to state a material fact necessary to make the statements made therein, in the light of the circumstances under which they were made, not misleading; (iii) the failure of any Directed Share Participant to pay for and accept delivery of Directed Shares that the Directed Share Participant agreed to purchase; and (iv) the Directed Share Program (in the case of (iv), other than for any loss, expense, liability, damages or claim that is finally judicially determined to have resulted from the gross negligence or willful misconduct of Stifel in conducting the Directed Share Program).

b. [Reserved]

c. Each Underwriter, severally and not jointly, agrees to indemnify, defend and hold harmless the Company, the Adviser and their respective affiliates, and their respective directors, officers, partners, members, employees, representatives and agents, and any person who controls the Company within the meaning of Section 15 of the Securities Act or Section 20 of the Exchange Act, from and against any loss, expense, liability, damages or claim (or actions in respect thereof) (including without



limitation, reasonable attorneys' fees and any and all reasonable expenses whatsoever incurred in investigating, preparing or defending against any litigation, commenced or threatened, or any claim whatsoever, and any and all amounts paid in settlement of any claim or litigation) which, jointly or severally, the Company or any such person may incur under the Securities Act, the Exchange Act or otherwise, insofar as such loss, expense, liability or claim arises out of or is based upon any untrue statement, alleged untrue statement, omission or alleged omission of a material fact contained in the Preliminary Prospectus, the Disclosure Package, any Issuer Free Writing Prospectus, the Final Prospectus, or the Company's Road Show presentation that was made in reliance upon and in conformity with information furnished in writing by an Underwriter to the Company expressly for use in the Preliminary Prospectus, the Disclosure Package, any Issuer Free Writing Prospectus, or the Final Prospectus (or in any amendment or supplement thereof), such information being limited to the following: (i) the last paragraph of the cover page regarding delivery of the Shares and (ii) the first paragraph of the section entitled "Underwriting—Commissions and Discounts," the section entitled "Underwriting—Price Stabilizations and Short Positions," the section entitled "Underwriting—Additional Compensation to Underwriters" and the section entitled "Underwriting—Delivery" (collectively, the "Underwriter Information").

d. If any action is brought against any person or entity (each, an "Indemnified Party"), in respect of which indemnity may be sought pursuant to Section 9(a) or Section 9(c) above, the Indemnified Party shall promptly notify the party(ies) obligated to provide such indemnity (each, an "Indemnifying Party") in writing of the institution of such action, and the Indemnifying Party shall assume the defense of such action, including the employment of counsel and payment of expenses; provided that the failure to notify the Indemnifying Party will not relieve the Indemnifying Party from any liability which the Indemnifying Party may have to any Indemnified Party(ies), unless and to the extent the Indemnifying Party did not otherwise know of such action and such failure results in the forfeiture by the Indemnifying Party of rights and defenses that would have had material value in the defense. The Indemnified Party(ies) shall have the right to employ its or their own counsel in any such case, but the fees and expenses of such counsel shall be at the expense of the Indemnified Party(ies), unless (i) the employment of such counsel shall have been authorized in writing by the Indemnifying Party in connection with the defense of such action, (ii) the Indemnifying Party shall not have employed counsel to have charge of the defense of such action within a reasonable time, or (iii) such Indemnified Party(ies) shall have reasonably concluded that counsel selected by the Indemnifying Party has an actual or potential conflict of interest or there may be defenses available to the Indemnified Party(ies) which are different from or additional to those available to the Indemnifying Party (in which case the Indemnifying Party shall not have the right to direct the defense of such action on behalf of the Indemnified Party(ies)), in any of which events such fees and expenses shall be borne by the Indemnifying Party and paid as incurred (it being understood, however, that the Indemnifying Party shall not be liable for the fees and expenses of more than one separate firm of counsel (in addition to local counsel) for the Indemnified Party(ies) in any one action or series of related actions in the same jurisdiction representing the Indemnified Party(ies) who are parties to such action). Notwithstanding anything in this paragraph to the contrary, the Indemnifying Party shall not be liable for any settlement of any such claim or action effected without its written consent. The Indemnifying Party shall have the right to settle any such claim or action for itself and any Indemnified Party(ies) so long as the Indemnifying Party pays any settlement payment and such settlement (A) includes a complete and unconditional release of the Indemnified Party(ies) from all losses, expenses, claims, damages, injunctions, liability and other obligations with respect to any claims that are the subject matter of such action, and (B) does not include a statement as to, or an admission of, fault, culpability or a failure to act by or on behalf of the Indemnified Party(ies).

e. If the indemnification provided for in this Section 9 is unavailable to an Indemnified Party in respect of any losses, expenses, liabilities or claims referred to therein, then each applicable Indemnifying Party, in lieu of indemnifying such Indemnified Party, shall contribute to the amount paid

or payable by such Indemnified Party as a result of such losses, expenses, liabilities, damages or claims (i) in such proportion as is appropriate to reflect the relative benefits received by the Company, on the one hand, and the Underwriters, on the other hand, from the offering and sale of the Shares, or (ii) if the allocation provided by clause (i) above is not permitted by applicable Law, in such proportion as is appropriate to reflect not only the relative benefits referred to in clause (i) above but also the relative fault of the Company, on the one hand, and of the Underwriters, on the other hand, in connection with the statements or omissions which resulted in such losses, expenses, liabilities, damages or claims, as well as any other relevant equitable considerations. The relative benefits received by the Company, on the one hand, and the Underwriters, on the other hand, shall be deemed to be in the same proportion as the total proceeds from the offering (net of the underwriting commission but before deducting expenses) received by the Company bear to the discount and commission and fee received by the Underwriters. The relative fault of the Company, on the one hand, and of the Underwriters, on the other hand, shall be determined by reference to, among other things, whether the untrue statement or alleged untrue statement of a material fact or omission or alleged omission relates to information supplied by the Company or by the Underwriters, and the parties' relative intent, knowledge, access to information and opportunity to correct or prevent such statement or omission. The amount paid or payable by a party as a result of the losses, claims, damages and liabilities referred to above shall be deemed to include any legal or other fees or expenses reasonably incurred by such party in connection with investigating or defending any claim or action.

f. The parties hereto agree that it would not be just and equitable if contribution pursuant to this Section 9 were determined by pro rata allocation or by any other method of allocation which does not take account of the equitable considerations referred to in Section 9(e) above. Notwithstanding the provisions of this Section 9, the Underwriters shall not be required to contribute any amount in excess of the amount (if any) by which its underwriting commission related to the Shares exceeds the amount of any damages which the Underwriters have otherwise been required to pay. No person guilty of fraudulent misrepresentation (within the meaning of Section 11(f) of the Securities Act) shall be entitled to contribution from any person who was not guilty of such fraudulent misrepresentation.

g. [Reserved]

h. The obligations of the parties to this Agreement contained in this Section 9 are not exclusive and shall not limit any rights or remedies which may otherwise be available to any Indemnified Party at law or in equity.

i. Notwithstanding any other provision of this Section 9, no party shall be entitled to indemnification and contribution under this Agreement in violation of Section 17(i) of the Investment Company Act.

#### **10. Default by One or More of the Underwriters**

If one or more of the Underwriters shall fail at the Closing Time or a Secondary Closing Date to purchase the Shares which it or they are obligated to purchase under this Agreement (the "Defaulted Shares"), the Representatives shall have the right, within 24 hours thereafter, to make arrangements for one or more of the non-defaulting Underwriters, or any other underwriters, to purchase all, but not less than all, of the Defaulted Shares in such amounts as may be agreed upon and upon the terms herein set forth; if, however, the Representatives shall not have completed such arrangements within such 24-hour period, then:

a. if the number of Defaulted Shares does not exceed 10% of the number of Shares to be purchased on such date, each of the non-defaulting Underwriters shall be obligated, severally and not

jointly, to purchase the full amount thereof in the proportions that their respective underwriting obligations hereunder bear to the underwriting obligations of all non-defaulting Underwriters, or

b. if the number of Defaulted Shares exceeds 10% of the number of Shares to be purchased on such date, this Agreement or, with respect to any Secondary Closing Date which occurs after the Closing Time, the obligation of the Underwriters to purchase, and the Company to sell, the Option Shares to be purchased and sold on such Secondary Closing Date shall terminate without liability on the part of any non-defaulting Underwriter.

No action taken pursuant to this Section 10 shall relieve any defaulting Underwriter from liability in respect of its default.

In the event of any such default which does not result in a termination of this Agreement or, in the case of a Secondary Closing Date which is after the Closing Time, which does not result in a termination of the obligation of the Underwriters to purchase and the Company to sell the relevant Option Shares, as the case may be, either (i) the Representatives or (ii) the Company shall have the right to postpone Closing Time or the relevant Secondary Closing Date, as the case may be, for a period not exceeding seven days in order to effect any required changes in the Registration Statement, the Disclosure Package or the Final Prospectus or in any other documents or arrangements. As used herein, the term "Underwriter" includes any person substituted for an Underwriter under this Section 10.

#### **11. Notices.**

Except as otherwise herein provided, all statements, requests, notices and agreements shall be in writing delivered by electronic mail, facsimile (with receipt confirmed), overnight courier or registered or certified mail, return receipt requested, and:

a. if to the Representatives, shall be sufficient in all respects if delivered or sent to Stifel, Nicolaus & Company, Incorporated, 787 7th Avenue, 11th Floor, New York, New York 10019, Attention: General Counsel (facsimile: 212-541-6668); and Piper Sandler & Co., 1251 Avenue of the Americas, 6th Floor, New York, New York 10020, with a copy to Ropes & Gray LLP, 1211 Avenue of the Americas, New York, NY 10036-8704, Attention: Paul Tropp and Michael Doherty;

b. if to the Company, shall be sufficient in all respects if delivered to the Company at the offices of the Company at 660 Madison Avenue, Suite 1600, New York, NY 10065, Attention: Gregory Gentile (email: greg@silverspikecap.com), with a copy to Davis Polk & Wardwell LLP, 450 Lexington Avenue, New York, NY 10017, Attention: Gregory Rowland (email: gregory.rowland@davispolk.com).

#### **12. Duties.**

Nothing in this Agreement shall be deemed to create a partnership, joint venture or agency relationship between the parties. The Underwriters undertake to perform such duties and obligations only as expressly set forth in this Agreement. Such duties and obligations of each Underwriter with respect to the Shares shall be determined solely by the express provisions of this Agreement, and the Underwriters shall not be liable except for the performance of such duties and obligations with respect to the Shares as are specifically set forth in this Agreement. The Company acknowledges and agrees that: (a) the sale and purchase of the Shares pursuant to this Agreement, including the determination of the offering price of the Shares and any related discount and commission and fee, is an arm's-length commercial transaction between the Company, on the one hand, and the Underwriters, on the other hand; (b) the Company is capable of evaluating and understanding and understands and accepts the terms, risks and conditions of the transactions contemplated by this Agreement; (c) in connection with each transaction contemplated

hereby and the process leading to such transaction, the Underwriters are and have been acting solely as a principal, and are not the financial advisor, agent or fiduciary of the Company or any of its affiliates, stockholders, creditors or employees, or any other party; (d) the Underwriters have not assumed and will not assume an advisory, agency or fiduciary responsibility in favor of the Company with respect to any of the transactions contemplated hereby or the process leading thereto (irrespective of whether any Underwriter has advised or is currently advising the Company on other matters); (e) the Underwriters and their affiliates may be engaged in a broad range of transactions that involve interests that differ from those of the Company, and the Underwriters have no obligation to disclose any of such interests; and (f) the Underwriters disclaim any implied duties (including any fiduciary duty), covenants or obligations arising from their performance of the duties and obligations expressly set forth in this Agreement. Any review by the Underwriters of the Company, the transactions contemplated hereby or other matters relating to such transactions will be performed solely for the benefit of the Underwriters and shall not be on behalf of the Company. The Company hereby waives and releases, to the fullest extent permitted by Law, any claims that the Company may have against the Underwriters with respect to any breach or alleged breach of agency or fiduciary duty.

### **13. Recognition of the U.S. Special Resolution Regimes.**

a. In the event that any Underwriter that is a Covered Entity becomes subject to a proceeding under a U.S. Special Resolution Regime, the transfer from such Underwriter of this Agreement, and any interest and obligation in or under this Agreement, will be effective to the same extent as the transfer would be effective under the U.S. Special Resolution Regime if this Agreement, and any such interest and obligation, were governed by the laws of the United States or a state of the United States.

b. In the event that any Underwriter that is a Covered Entity or a BHC Act Affiliate of such Underwriter becomes subject to a proceeding under a U.S. Special Resolution Regime, Default Rights under this Agreement that may be exercised against such Underwriter are permitted to be exercised to no greater extent than such Default Rights could be exercised under the U.S. Special Resolution Regime if this Agreement were governed by the laws of the United States or a state of the United States.

c. As used in this section:

“BHC Act Affiliate” has the meaning assigned to the term “affiliate” in, and shall be interpreted in accordance with, 12 U.S.C. § 1841(k).

“Covered Entity” means any of (i) a “covered entity” as that term is defined in, and interpreted in accordance with, 12 C.F.R. § 252.82(b), (ii) a “covered bank” as that term is defined in, and interpreted in accordance with, 12 C.F.R. § 47.3(b), or (iii) a “covered FSI” as that term is defined in, and interpreted in accordance with, 12 C.F.R. § 382.2(b).

“Default Right” has the meaning assigned to that term in, and shall be interpreted in accordance with, 12 C.F.R. §§ 252.81, 47.2 or 382.1, as applicable.

“U.S. Special Resolution Regime” means each of (i) the Federal Deposit Insurance Act of 1950, as amended, and the regulations promulgated thereunder and (ii) Title II of the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010, as amended, and the regulations promulgated thereunder.

**14. Governing Law.**

**THIS AGREEMENT SHALL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAWS OF THE STATE OF NEW YORK, INCLUDING ALL MATTERS OF CONSTRUCTION, VALIDITY AND PERFORMANCE (INCLUDING SECTIONS 5-1401 AND 5-1402 OF THE NEW YORK GENERAL OBLIGATIONS LAW, BUT EXCLUDING ALL OTHER CHOICE OF LAW AND CONFLICTS OF LAWS RULES AND PRINCIPLES THAT WOULD REQUIRE THE APPLICATION OF THE LAW OF ANY OTHER STATE).** The parties hereto agree to be subject to, and hereby irrevocably submit to, the nonexclusive jurisdiction of any United States federal or New York state court sitting in New York, New York, in respect of any Proceeding arising out of or relating to this Agreement or the transactions contemplated herein, and irrevocably agree that all claims in respect of any such Proceeding may be heard and determined in any such court. Each of the parties hereto irrevocably waives, to the fullest extent permitted by applicable Law, any objection to the laying of the venue of any such suit, action or proceeding brought in any such court and any claim that any such suit, action or proceeding has been brought in an inconvenient forum.

**EACH OF THE UNDERWRITERS AND THE COMPANY WAIVES ALL RIGHT TO TRIAL BY JURY IN ANY PROCEEDING, CLAIM, OR COUNTERCLAIM (WHETHER BASED ON CONTRACT, TORT OR OTHERWISE) RELATED TO OR ARISING OUT OF THIS AGREEMENT.**

**15. Headings.**

The section headings in this Agreement have been inserted as a matter of convenience of reference and are not a part of this Agreement.

**16. Parties at Interest.**

This Agreement has been and is made solely for the benefit of the Underwriters, the Company, the controlling persons, directors and officers referred to in Section 9 hereof, and their respective successors, executors and administrators. No other person, partnership, association, corporation or entity (including a purchaser, in its capacity as such, from the Underwriters) shall acquire or have any right under or by virtue of this Agreement.

**17. Amendments; Waivers.**

No amendment, modification or waiver of any provision of this Agreement, nor any consent or approval to any departure therefrom, shall in any event be effective unless same shall be in writing and signed by the parties hereto.

**18. Counterparts.**

This Agreement may be executed in two or more counterparts, each of which will be deemed an original, but all of which together will constitute one and the same instrument. Counterparts may be delivered via facsimile, electronic mail (including pdf or any electronic signature complying with the U.S. federal ESIGN Act of 2000, Uniform Electronic Transactions Act or other applicable law) or other transmission method and any counterpart so delivered will be deemed to have been duly and validly delivered and be valid and effective for all purposes.

[SIGNATURE PAGE FOLLOWS]

If the foregoing correctly sets forth the understanding among the Company, the Adviser and the Underwriters, please so indicate in the space provided below for the purpose, whereupon this letter shall constitute a binding agreement among the Company, the Adviser and the Underwriters.

Very truly yours,

SILVER SPIKE INVESTMENT CORP.

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

SILVER SPIKE CAPITAL, LLC

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

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[SIGNATURE PAGE TO UNDERWRITING AGREEMENT]

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Accepted and agreed to as of the date first above written, acting on behalf of itself and the other several Underwriters named in Schedule A hereto:

STIFEL, NICOLAUS & COMPANY, INCORPORATED

By: \_\_\_\_\_  
Name:  
Title:

PIPER SANDLER & CO.

By: \_\_\_\_\_  
Name:  
Title:

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[SIGNATURE PAGE TO UNDERWRITING AGREEMENT]

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**SCHEDULE A**

**UNDERWRITER ALLOCATION BREAKDOWN**

<u>Name of Underwriter</u>	<u>Number of Initial Shares</u>
Stifel, Nicolaus & Company, Incorporated	[•]
Piper Sandler & Co.	[•]
Cantor Fitzgerald & Co.	[•]
Canaccord Genuity, LLC	[•]

Schedule A

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**SCHEDULE B**

**[PERMITTED WRITTEN TESTING-THE-WATERS COMMUNICATIONS]**

Schedule B-1

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**SCHEDULE C**

**PRICING INFORMATION:**

Security being sold in the Offering	Common Stock
Offering price per share	\$ 14.00
Number of Shares being sold in the Offering	8,928,572
Gross proceeds from the Offering before deducting the underwriter's discount and offering expenses	\$ 125,000,008

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**ISSUER FREE WRITING PROSPECTUSES:**

[to be added]

Schedule C-1

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**SCHEDULE D**

1. Vivek Bunty Bohra
2. Gregory Gentile
3. Scott Gordon
4. Michael W. Chorske
5. Tracey Brophy Warson
6. Americo Da Corte
7. Silver Spike Capital, LLC

**SCHEDULE E**

**[COMPANY ADDITIONAL WRITTEN COMMUNICATION]**

Schedule E-1

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EXHIBIT A

FORM OF LOCK-UP AGREEMENT

Silver Spike Investment Corp.

Public Offering of Common Stock

Dated as of \_\_\_\_\_

Stifel, Nicolaus & Company, Incorporated  
787 Seventh Avenue, Eleventh Floor  
New York, New York 10019

Piper Sandler & Co.

1251 Avenue of the Americas, Sixth Floor  
New York, New York 10022

This agreement is being delivered in connection with the proposed Underwriting Agreement (the "Underwriting Agreement") between Silver Spike Investment Corp., a Maryland corporation (the "Company"), and Stifel, Nicolaus & Company, Incorporated ("Stifel") and Piper Sandler & Co., as representatives (in such capacity, the "Representatives"), and each of the other underwriters named in Schedule A therein (collectively, the "Underwriters," which term shall also include any underwriter substituted as provided in Section 10 thereof), relating to a proposed public offering by the Underwriters of the Company's Common Stock, par value \$0.01 per share (the "Common Stock").

In order to induce the Underwriters to enter into the Underwriting Agreement, and in light of the benefits that public offering by the Underwriters of the Common Stock will confer upon the undersigned in its capacity as a securityholder and/or an officer, director or employee of the Company, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the undersigned agrees with the Representatives that, during the period beginning on and including the date of the Underwriting Agreement through and including the date that is the 180<sup>th</sup> day after the date of the Final Prospectus (as defined in the Underwriting Agreement), the undersigned will not, without the prior written consent of the Representatives, directly or indirectly:

(i) offer, pledge, sell, contract to sell, sell any option or contract to purchase, purchase any option or contract to sell, grant any option, right or warrant to purchase, lend or otherwise transfer or dispose of any shares of the Company's Common Stock (the "Common Stock") or preferred stock or other capital stock (collectively, "Capital Stock") or any securities convertible into or exercisable or exchangeable for Common Stock or other Capital Stock, whether now owned or hereafter acquired by the undersigned or with respect to which the undersigned has or hereafter acquires the power of disposition, or

(ii) enter into any swap or other agreement, arrangement or transaction that transfers to another, in whole or in part, directly or indirectly, any of the economic consequences of ownership of any Common Stock or other Capital Stock or any securities convertible into or exercisable or exchangeable for any Common Stock or other Capital Stock.

The undersigned agrees that, prior to engaging in any transaction or taking any other action that is subject to the terms of this agreement during the period from and including the date of this agreement through and including the expiration of the restricted period, the undersigned will give prior notice thereof to the Company and will not consummate any such transaction or take any such action unless it has received written confirmation from the Company that such restricted period has expired.

Notwithstanding the provisions set forth in the second preceding paragraph, the undersigned may, without the prior written consent of the Representatives, transfer any Common Stock or other Capital Stock or any securities convertible into or exchangeable or exercisable for Common Stock or other Capital Stock:

(1) if the undersigned is a natural person, as a bona fide gift or gifts, or by will or intestacy, or as may be required by court order or by action of law, to any member of the immediate family (as defined below) of the undersigned or to a trust the beneficiaries of which are exclusively the undersigned or members of the undersigned's immediate family, or as a bona fide gift or gifts to a charity or educational institution,

(2) if the undersigned is a partnership or a limited liability company, to a partner or member, as the case may be, of such partnership or limited liability company if, in any such case, such transfer is not for value,

(3) if the undersigned is a trust, to a beneficiary of such trust if such transfer is not for value, and

(4) if such Common Stock or other Capital Stock was acquired in open market transactions or acquired from the Company under its dividend reinvestment plan after the completion of the public offering, if such transfer is not for value;

provided, however, that in the case of any transfer described in clause (1), (2) or (4) above, it shall be a condition to the transfer that (A) the transferee executes and delivers to the Representatives, not later than one business day prior to such transfer, a written agreement, in substantially the form of this agreement (it being understood that any references to "immediate family" in the agreement executed by such transferee shall expressly refer only to the immediate family of the undersigned and not to the immediate family of the transferee) and otherwise satisfactory in form and substance to the Representatives, and (B) such transfer is not reported or required to be reported in any public report or filing with the Securities and Exchange Commission or otherwise, and the undersigned does not otherwise voluntarily effect any public filing or report regarding such transfer during such 180-day restricted period. For purposes of this paragraph, "immediate family" shall mean a spouse, child, grandchild or other lineal descendant (including by adoption), father, mother, brother or sister of the undersigned.

The undersigned further agrees that (i) it will not, during such restricted period, make any demand or request for or exercise any right with respect to the registration under the Securities Act of 1933, as amended (the "Securities Act"), of any Common Stock or other Capital Stock or any securities convertible into or exercisable or exchangeable for Common Stock or other Capital Stock, and (ii) the Company may, with respect to any Common Stock or other Capital Stock or any securities convertible into or exercisable or exchangeable for Common Stock or other Capital Stock owned or held (of record or beneficially) by the undersigned, cause the transfer agent or other registrar to enter stop transfer instructions and implement stop transfer procedures with respect to such securities during such restricted period.

The undersigned hereby represents and warrants that the undersigned has full power and authority to enter into this agreement and that this agreement has been duly authorized (if the undersigned is not a natural person), executed and delivered by the undersigned and is a valid and binding agreement of the undersigned. This agreement and all authority herein conferred are irrevocable and shall survive the death or incapacity of the undersigned (if a natural person) and shall be binding upon the heirs, personal representatives, successors and assigns of the undersigned.

The undersigned acknowledges and agrees that the Underwriters have not provided any recommendation or investment advice, nor have the Underwriters solicited any action from the undersigned with respect to the offering of the securities and the undersigned has consulted their own legal, accounting, financial, regulatory and tax advisors to the extent deemed appropriate.

The undersigned acknowledges and agrees that whether or not any public offering of Common Stock actually occurs depends on a number of factors, including market conditions.

**[Signature Page Immediately Follows]**

IN WITNESS WHEREOF, the undersigned has executed and delivered this agreement as of the date first set forth above.

Yours very truly,

\_\_\_\_\_  
Print Name:

\_\_\_\_\_  
A-4



**EXHIBIT B**

**[FORM OF LEGAL OPINION AND NEGATIVE ASSURANCE LETTER]**

January 3, 2022

Silver Spike Investment Corp.  
660 Madison Avenue, Suite 1600  
New York, NY 10065

Re: Silver Spike Investment Corp. – Registration Statement on Form N-2  
(File No: 333-257252 (the “Registration Statement”))

Ladies and Gentlemen:

We have acted as special Maryland counsel to Silver Spike Investment Corp., a Maryland corporation (the “Company”), in connection with the issuance of up to \$143,750.012.00 worth of shares (the “Shares”) of the Company’s common stock, par value \$0.01 per share (the “Common Stock”), in an initial public offering (the “Offering”) pursuant to the above-referenced Registration Statement filed by the Company with the U.S. Securities and Exchange Commission (the “Commission”) under the Securities Act of 1933, as amended (the “Securities Act”), and the regulations promulgated thereunder. The Shares are to be sold pursuant to an Underwriting Agreement substantially in the form filed as an exhibit to the Registration Statement between Stifel, Nicolaus & Company, Incorporated and Piper Sandler & Co. as representatives of the several underwriters named in Schedule A thereto, and the Company (the “Underwriting Agreement”). The Registration Statement includes a prospectus dated January 3, 2022 (the “Prospectus”), to be furnished to potential purchasers in the Offering. We understand that our opinion is required to be filed as an exhibit to the Registration Statement.

In our capacity as special Maryland counsel to the Company and for purposes of this opinion, we have reviewed the originals, or copies certified or otherwise identified to our satisfaction, of the following documents:

- A. the Registration Statement, including the Prospectus;
  - B. the charter of the Company, certified on the date hereof as being a true, correct, and complete copy thereof by the Secretary of the Company (the “Charter Documents”);
  - C. the Bylaws of the Company, certified on the date hereof as being a true, correct, and complete copy thereof by the Secretary of the Company (the “Bylaws”);
  - D. the form of Underwriting Agreement filed as an exhibit to the Registration Statement;
  - E. certain resolutions adopted by the Board of Directors of the Company regarding the Offering and the Underwriting Agreement (the “Resolutions”);
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F. a certificate of the Company regarding certain matters related to the Underwriting Agreement, the issuance and sale of the Shares in the Offering, and the Prospectus (the "Certificate");

G. a certificate of the Maryland State Department of Assessments and Taxation dated December 1, 2021, to the effect that the Company is duly incorporated and existing under the laws of the State of Maryland and is in good standing and duly authorized to transact business in the State of Maryland; and

H. such other documents, corporate records, and instruments as we have deemed necessary or appropriate, in our professional judgment, in connection with providing this opinion letter, subject to the limitations, assumptions, and qualifications contained herein.

In rendering the opinion set forth below, we have assumed: (i) the genuineness of all signatures and the legal capacity of all individuals who have executed any of the documents we have reviewed; (ii) the authenticity of all documents submitted to us as originals, the conformity with originals of all documents submitted to us as certified, photostatic, or facsimile copies or portable document file ("pdf") or other electronic image format copies (and the authenticity of the originals of such copies), and that the form and content of all documents submitted to us as unexecuted drafts do not differ in any respect relevant to this opinion from the form and content of such documents as executed and delivered; (iii) that there has been no oral or written modification of or amendment to any of the documents we have reviewed, and that there has been no waiver of any provision of any of the documents we have reviewed in connection with this opinion, by action or omission of the parties or otherwise; (iv) that all documents submitted to us and public records we have reviewed or relied upon are accurate and complete; (v) that the persons identified as officers of the Company are actually serving as such and that any certificates representing the Shares are properly executed by one or more such persons; (vi) as to all acts undertaken by any governmental authority, and of those persons purporting to act in any governmental capacity, that the persons acting on behalf of the governmental authority have the power and authority to do so, and that all actions taken by such persons on behalf of such governmental authority are valid, legal, and sufficient; and (vii) all representations, warranties, certifications, and statements with respect to matters of fact and other factual information (a) made by public officers, (b) made by officers or representatives of the Company, including certifications made in the Certificate, and (c) made or contained in any documents we have reviewed, are accurate, true, correct, and complete in all material respects.

We have also assumed that: (i) the Resolutions and the actions reflected therein authorizing the Company to issue, offer, and sell the Shares are, and will be, in full force and effect at all times at which any Shares are offered or sold by the Company, and the Shares will be sold at a price established by the Board of Directors of the Company in accordance with Section 2-203(a) of the Maryland General Corporation Law, and we have undertaken no independent verification with respect thereto; (ii) the Charter Documents and the Bylaws have not been amended or rescinded; (iii) the Registration Statement and any amendment thereto will remain effective at the time of the issuance of the Shares thereunder; (iv) at the time of the issuance of the Shares, the Company or its transfer agent will record in the Company's stock ledger the name of the persons to whom such

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Shares are issued; and (v) the Company will remain duly organized, validly existing, and in good standing under Maryland law at the time any Shares are issued.

As to any facts material to our opinion set forth below, without undertaking to verify the same by independent investigation, we have relied exclusively upon the documents we have reviewed, the statements and information set forth in such documents, the Certificate, and the additional matters recited or assumed in this letter, all of which we assume to be true, complete, and accurate in all respects.

Based upon the foregoing and subject to the limitations and assumptions set forth herein, and having due regard for such legal considerations as we deem relevant, we are of the opinion that the Shares, when issued and delivered in accordance with the terms of the Offering against payment of the consideration therefor in accordance with the Registration Statement and the Underwriting Agreement, will be validly issued, fully paid, and nonassessable.

The foregoing opinion is based on and is limited to the Maryland General Corporation Law (including the reported judicial decisions interpreting those laws currently in effect), and we express no opinion herein with respect to the effect or applicability of any other laws or the laws of any other jurisdiction. The opinion expressed herein concerns only the effect of the laws (excluding the principles of conflict of laws) as currently in effect, and we assume no obligation to supplement the opinion expressed herein if any applicable laws change after the date hereof, or if we become aware of any facts that might change the opinion expressed herein after the date hereof. The opinion is limited to the matters set forth herein, and no other opinion should be inferred or implied beyond the matters expressly stated.

Notwithstanding anything to the contrary contained herein, we express no opinion concerning the securities laws of the State of Maryland, or the rules and regulations promulgated thereunder, or any decisional laws interpreting any of the provisions of the securities laws of the State of Maryland, or the rules and regulations promulgated thereunder.

We hereby consent to the filing of this opinion with the Securities and Exchange Commission as Exhibit I to the Registration Statement and to the reference to our firm under the caption "Legal Matters" in the Prospectus. By giving such consent, we do not admit that we are experts with respect to any part of the Registration Statement, including Exhibit I, within the meaning of the term "expert" as used in the Securities Act or the regulations promulgated thereunder.

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Very truly yours,

BAKER, DONELSON,  
BEARMAN, CALDWELL  
& BERKOWITZ, a professional corporation

By: /s/ Kenneth B. Abel  
Kenneth B. Abel  
Authorized Representative

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**OPINION ON THE LEGAL STATUS OF  
SILVER SPIKE INVESTMENT CORP.**

**January 3, 2022**

**INTRODUCTION**

Silver Spike Capital LLC (“SSC” or the “Adviser”) acts as an investment adviser and manager of Silver Spike Investment Corp. (“SSIC” or the “Company”), and has retained Dentons US LLP for the purposes of rendering this opinion for the benefit of the Company and its shareholders and, in particular, has asked us whether the Company and its shareholders will violate the laws of the United States and corresponding state laws with respect to the Company’s equity investments in Cannabis Related Businesses, as defined below, and debt investments in Cannabis Companies, as defined below.

Based upon our analysis, the applicable federal laws are the Controlled Substances Act, 21 U.S.C. § 801, et seq. (the “CSA”), the Money Laundering Control Act, 18 U.S.C. § 1956 (the “MCA”), and the Drug Paraphernalia law contained in the CSA, 21 U.S.C. § 863 (the “DPL”). As described more fully below, our opinion is that the Company and its shareholders will not violate either federal law or any state law with respect to any of the Company’s investments in companies that participate in the cannabis industry. This letter is provided for inclusion with the Company’s Registration Statement filed on Form N-2 (the “Registration Statement”). Based upon the foregoing, and subject to the assumptions, qualifications and limitations set forth herein and as of the date of this letter, neither the Company nor its shareholders’ investments in the Company violate the CSA, the MCA, or the DPL.

Our opinion herein is expressed solely with respect to the CSA, including indirect violations (such as through aiding and abetting, and conspiracy), the MCA, and the DPL contained in the CSA (collectively, “Applicable Federal Law” or “Applicable Federal Laws”) and is based on these laws as in effect on the date hereof. Our opinion expressed below is subject to and may be limited by future legislation or case law. The opinion expressed herein represents our reasonable professional

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judgment as to the matters of law addressed herein, based upon the facts presented or assumed, and is not a guarantee that a court will reach any particular result.

In connection with this opinion, we have examined and relied upon the originals, or copies certified or otherwise identified to our satisfaction, of such records, documents, certificates and other instruments as in our judgment are necessary or appropriate to enable us to render the opinion (the "Diligence Process") expressed below. As to certain factual matters, we have relied upon the Factual Certification of the Adviser and have not sought to independently verify such matters. For the purposes of providing this legal opinion to you, we have assumed without independent verification or inquiry: the truthfulness, accuracy, and completeness of the information, representations and warranties contained or made in documents and information provided to us; that the person executing the Factual Certification is duly authorized to do so and has the legal capacity to do so, and that all signatures are genuine; the truthfulness, accuracy, and completeness of the statements or representations made to us during the diligence process. Whenever our opinion, with respect to the absence of facts, is qualified by the phrase "to our knowledge" or a similar phrase, it is intended to indicate that during the course of our representation in connection with the issuance of this letter, no information has come to our attention which would give us current actual knowledge of the existence or absence of such facts. Except to the extent expressly set forth herein, we have not undertaken any independent investigation or verification to determine the existence or absence of such facts, and no inference as to our knowledge of the existence or absence of such facts should be drawn from our limited representation of the Company. If any of the foregoing assumptions or any other assumption set forth herein is inaccurate, invalid, or incorrect, our opinions may be otherwise than those as stated herein. We render no opinion with respect to any of the matters assumed.

This letter is qualified in its entirety and is subject to the following comments and limitations. Our opinion is limited to the matters expressly stated herein, and no opinion is implied or may be inferred beyond the matters expressly set forth. This letter is given as of the date hereof, and we expressly disclaim any obligation to update or supplement our opinion contained herein to reflect any facts or circumstances that may hereafter come to our attention or any changes in laws that may hereafter occur. The foregoing opinions are limited, as applicable, to Applicable Federal Law, as defined above. Our opinion focuses on the CSA, MCA and DPL and, based on the current status of state laws regarding cannabis as of the date of this opinion, it is our view that the CSA, MCA and DPL are more stringent. Therefore, it is our opinion that, if SSIC complies with the CSA, MCA and DPL (which we conclude it does), then, in addition to not violating the CSA, MCA and DPL, the Company will meet state law standards. We express no opinion as to any other laws, rules or regulations of any other jurisdiction. We are not rendering any opinion as to the Company's compliance with any federal, state, or local law, rule or regulation relating to securities, or to the sale or issuance thereof.

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## FACTUAL BACKGROUND FOR OPINION

SSIC is a specialty finance company, formed in 2021 as a Maryland corporation and structured as an externally managed, closed-end, non-diversified management investment company. SSIC intends to elect to be treated as a business development company (“BDC”) under the Investment Company Act of 1940. The Company also intends to elect to be treated, and to qualify annually, as a regulated investment company under Subchapter M of the Internal Revenue Code for U.S. federal income tax purposes, commencing with its first taxable year ending after the completion of its initial public offering.<sup>1</sup> SSIC is externally managed by SSC. SSIC will pay SSC a base management fee and an incentive fee based on a percentage of SSIC’s ordinary income and capital gains.<sup>2</sup>

### Description of SSIC’s Principal Investment Strategy

The Company’s principal investment strategy as presently stated in the Registration Statement or as otherwise represented to us by the Adviser is as follows:

- SSIC is among the many private and public companies providing ancillary goods or services to the broad ecosystem of companies involved directly or indirectly in state-regulated cannabis programs. Some examples of recently listed companies that service state-legal cannabis businesses are: Akerna (NASDAQ: KERN) (provider of seed-to-sale and point-of-sale tracking to state-legal Cannabis Companies); GrowGeneration Corp. (NASDAQ: GRWG) (chain of hydroponics stores in states that have legalized cannabis cultivation); and AFC Gamma (NASDAQ: AFCG) (real estate investment trust (“REIT”) providing loans to state cannabis licensees). Further examples are provided on page 20. The Company seeks to achieve its investment objective, under normal market conditions, primarily in equity and debt securities.
- SSIC anticipates that certain of its portfolio investments will be equity investments or loans to companies with at least 50% of their revenues or profits derived from, or 50% of their assets committed to, activities related to cannabis at the time of investment.<sup>3</sup> These companies may either (i) operate entirely legally under all applicable, including federal, laws (“Cannabis Related Businesses”) or (ii) operate in the state-licensed cannabis space and be compliant with state law, but not necessarily U.S. federal law due to the CSA’s prohibition on cannabis (“Cannabis Companies”). As discussed herein, SSIC may make loans to Cannabis Related Businesses and Cannabis Companies, but will not make equity investments in Cannabis

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<sup>1</sup> SSIC SEC Form N-2, dated June 21, 2021 (“SSIC N-2”).

<sup>2</sup> SSIC Factual Certification ¶ 3.

<sup>3</sup> SSIC N-2.

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Companies. SSIC is not required to invest a specific percentage of its assets in such Cannabis Related Businesses or Cannabis Companies, and may make debt and equity investments in other companies not related to cannabis in the health and wellness sector.

- All of SSIC's equity investments will be in companies complying with all applicable federal and state laws and regulations, including U.S. federal laws, even if they have some involvement directly or indirectly in the state-legal cannabis industry, such as in the case of Cannabis Related Businesses.<sup>4</sup> Portfolio companies receiving equity investments may include those which (i) legally support the legal production, cultivation, and/or sale of cannabis, such as certain agro-business, biotechnology, life sciences, pharmaceutical, retail, and finance companies, (ii) perform lawful research as to the medical and pharmaceutical applications of cannabis and its extracts, (iii) produce, develop and legally sell devices, goods, and equipment related to the cannabis industry, including hemp and its legal derivatives, or (iv) are in the health and wellness sector.
- The Company expects to receive nominally priced equity warrants and/or make direct equity investments in connection with a debt investment in some of the portfolio investments that operate legally under all applicable federal and state laws. These equity warrants or direct equity investments would not be made in any Cannabis Company, but would be made only in companies compliant with all state and federal laws (such as Cannabis Related Businesses). A portion of SSIC's portfolio may be comprised of derivatives, including total return swaps, but only in companies complying with all applicable federal and state laws.<sup>5</sup>
- To be clear, SSIC does not cultivate, distribute, sell, or even possess cannabis. Nor does SSIC process or handle payments for, or place advertisements for the sale of, cannabis or cannabis products.
- Debt investments or loans to any Cannabis Company will be limited to companies complying fully with, and if legally required, licensed by, state-regulated cannabis programs, and will otherwise be structured to be fully legal under all applicable laws. The Company intends that its debt investments will often be secured by first or second priority liens on assets of the portfolio company. It will never own, control, or manage any property on which cannabis is possessed or sold. The Company will not make equity investments in any Cannabis Companies, and will offer only loans to these companies, while the federal prohibition on cannabis under the CSA remains in place.
- Principal and interest payments on loans are not tied to borrowers' sales of cannabis. SSIC does not share revenues with its borrowers or take any type of commission or additional fees

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<sup>4</sup> SSIC Factual Certification ¶ 4.

<sup>5</sup> *Id.* ¶ 6.

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that are contingent upon the customers' business success. SSIC does not have an interest in whether any Cannabis Company borrower achieves financial success selling cannabis products. The principal and interest payment obligations for SSIC's loans are not tied in any way to borrowers' revenues or profits, and remain the same regardless of a borrower's performance. SSIC would prefer that borrowers not default and that at least some seek additional loans from the Company, only in the sense that any business wants its customers to meet their payment obligations to the business and continue to utilize the business's services. Additionally, foreclosing upon collateralized assets or forcing borrowers to liquidate collateralized assets to meet their loan obligations requires additional effort on SSIC's part, and the Company would prefer for borrowers to meet their loan obligations without seeking foreclosure or liquidation of collateralized assets. That being said, in the event of a default, SSIC, through the Adviser, seeks to assure that more than enough of the borrower's assets are secured and that the borrower is required to liquidate assets, if necessary, to pay the outstanding amounts due under the loan. In other words, SSIC seeks to receive payments regardless of whether the borrower is financially successful, and SSIC does not have an incentive, like an additional bonus payment, that is proportionate to or contingent upon the borrower's financial success.

- SSIC will never own, control, manage, or take possession of real estate on which cannabis is sold or used in violation of federal law. SSIC also has no legal access to any cannabis-related property, except for limited inspection rights provided by agreement. SSIC's involvement with the real estate is limited to listing it as a secured asset and hiring a third party to conduct periodic reasonable diligence activities, as set forth in the agreements with borrowers. If a borrower defaults, the borrower may be required to sell assets, including its real property, if necessary, to pay back the loan.
- SSIC's loans are never solely directed for the purpose of purchasing any property, but can be used to fund any of the borrower's general corporate purposes, including paying off prior indebtedness.
- SSIC deliberately operates its business openly, does not accept cash payments from its customers, has an anti-money laundering ("AML") policy, which includes procedures to assure transparency of the sources of funds, and is open and transparent with financial institutions regarding the source of its funds. SSIC and SSC maintain procedures to comply with all applicable AML and money handling laws. Those procedures meet the legal obligations, and go further to assure transparency and to protect against any reputational harm of even perceived money laundering or involvement with illegal activities. The Compliance Manual expressly states a commitment "at all times to operate in conformity with all applicable laws."<sup>6</sup> It has an

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<sup>6</sup> Compliance Manual, § 1.2(c).

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entire chapter dedicated to AML,<sup>7</sup> and includes procedures “to protect [the Company] from potentially dealing with money launderers and others engaged in criminal activities and to ensure that it is not ‘willfully blind’ to such activities on the part of its investors, [as such] willful blindness could result in criminal liability for the Company itself.”<sup>8</sup>

SSIC is targeting companies in the cannabis sector because the cannabis industry is one of the fastest growing industries in the United States and because the experience and knowledge of SSIC’s founders and the Adviser give SSIC a strong ability to operate in the space and handle the burdens imposed by government regulations and guidelines for companies operating in the space.<sup>9</sup> The U.S. state-legal cannabis industry has become significant, projected to generate over \$20 billion of retail sales in 2021 and to continue to grow. Thirty-seven states, the District of Columbia, Puerto Rico, the Virgin Islands, and Guam have legalized some form of cannabis cultivation, processing, distribution, sales and use for certain medical purposes. Eighteen of those states, the District of Columbia, Guam, and Northern Mariana have legalized cannabis for adults for non-medical purposes (sometimes referred to as adult or recreational use).<sup>10</sup> While the United States government continues to list “marihuana” (except hemp) as a Schedule I controlled substance under the CSA, it has not enforced federal cannabis prohibition laws against state-legal entities or their vendors in at least six years.

As is required of BDCs, SSIC will offer managerial assistance to its portfolio companies, but will limit the offered (and any provided) assistance to services that would generally help any business operate in legal compliance and with good corporate governance. SSIC will not offer any services that could be construed as assisting a borrower to grow, manufacture, or sell cannabis. The services will be limited to: assistance relating to accounting and financial reporting best practices; assistance relating to tax planning and preparation; recommendations on accounting and financial reporting technology and operating systems, and assistance in negotiating with vendors and licensors of such technology; providing analyses of existing financing arrangements, assistance in negotiating additional debt financing or restructuring existing debt financing, and introductions to banks and other sources of capital; advice with respect to corporate best practices and corporate governance, including advice with respect to board structure and governance and implementing corporate codes of ethics and guidelines for transactions with related parties; assistance in preparing a portfolio company to become a

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<sup>7</sup> *Id.*, Chapter XV (Anti-Money Laundering and Sanctions Program). The Compliance Manual also contains provisions to assure compliance with securities laws. *E.g. id.* §§ 3.2, 3.2, 6.1-6.6, 7.1-13.6, 16.1.

<sup>8</sup> *Id.* § 15.1.

<sup>9</sup> SSIC Factual Certification ¶ 2.

<sup>10</sup> Connecticut, New Mexico, and New York are the most recent states to legalize adult-use cannabis. We do not include in the number South Dakota, where a ballot initiative passed but was overturned by a state court and is on appeal. Accordingly, the number could soon increase to nineteen states.

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public company, including guidance on public company accounting and financial reporting standards; assistance in corporate insurance planning including analyses of appropriate coverage levels and insurance terms and negotiating with insurance providers; assistance with human resources best practices; legal counsel referrals; and guidance on cash management.<sup>11</sup>

The Adviser has further represented to us that the following additional principles will be adhered to in selecting investments for the Company:

- SSIC, through SSC, has robust procedures to assure that its portfolio companies comply with applicable laws (excepting, of course, the issues raised for Cannabis Companies under the CSA), including that Cannabis Companies are properly licensed and complying with applicable state and local laws and regulations, and that Cannabis Related Businesses are complying with Applicable Federal Law. SSIC and SSC also maintain anti-money laundering procedures.
- SSC, as the Adviser, conducts significant due diligence on companies as a condition to making a debt or equity investment, and after making an investment on an ongoing basis.<sup>12</sup> SSC's due diligence process for companies operating in state regulated cannabis programs goes well beyond checking to make sure that the company is properly licensed. SSC makes sure that the company is complying with state cannabis laws as well as other laws and utilizing best practices for finance, accounting, money handling and insurance. These companies must supply, where applicable, and among other documents and information:
  - formation and governing corporate documents (charter, bylaws, operating agreement, etc.);
  - the names of any parent company, subsidiaries or related or previously owned entities;
  - information about investors/owners and financial interest holders, including a government-issued identification (e.g., driver's license or passport), the Social Security number, and the address of each individual that owns at least 25% of the fully diluted stock/equity interests/beneficial ownership interests in the company;
  - all cannabis licenses for the company and each subsidiary or parent (and whether any such license has ever been suspended or revoked);
  - a list and description of all other permits (cannabis-related and non-cannabis related) necessary for the company to operate its business;

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<sup>11</sup> SSIC Factual Certification ¶ 11.

<sup>12</sup> SSC Customer Intake Checklist; SSC Due Diligence Request List.

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- material filings and correspondence with any state, federal or foreign governmental or regulatory agencies since the company's inception;
  - copy of all notices of any citations, violations or claimed violations received by the company, involving any laws (cannabis and non-cannabis), ordinances, rules, regulations or orders, and any zoning, environmental, health, safety, wage and hour, equal opportunity and anti-discrimination, ordinances, rules, regulations, or orders;
  - all corporate policies and employee manuals;
  - a description of the company's compliance protocols, standard operating procedures and security plans with respect to its cannabis licensed operations, and copies of policies for compliance with all cannabis regulations, diligence of customers and other internal compliance programs/policies;
  - a description of compliance with inventory tracking/track-and-trace system, copies of all regulatory compliance assessments or investigations generated by the company or on its behalf and a description of actions taken in response to such reports;
  - documents detailing any policies/programs/procedures for any recall of cannabis products sold at any of the company's dispensary locations;
  - a description of the company's money handling and AML policies and procedures, including cash management, deposit and security procedures and a description of how, and whether compliantly, cash is deposited with a bank (if at all);
  - the identity of employees responsible for those protocols, procedures and operations;
  - information about the company's vendors and suppliers and material agreements;
  - a list of all real property owned;
  - copies of all real estate leases, deeds, mortgages, title policies, surveys, zoning approvals, and variances or use permits;
  - a list of all accounting and POS systems used or expected to be used by the company, together with any associated documentation;
  - a list of all banks, credit union, and/or other financial institutions that the company uses or expects to use;
  - three years of returns for federal and state tax, including for income, property and payroll, and a comprehensive overview of the company's tax position, including amount and accounting treatment of IRS Section 280E liabilities, net operating losses
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or any other tax attributes, and any communications with the state taxing authorities or IRS regarding potential or actual tax audits, fines, unpaid balances, etc.;<sup>13</sup>

- all insurance certificates and endorsements and contact information for the company's insurance brokers and companies;
  - information and documents relating to environmental risks and exposure;<sup>14</sup>
  - lists of all US and foreign patents, copyrights, trademarks, and pending applications;
  - examples of the company's advertisements and marketing;
  - a list of all current and planned products (or services) and a description of all packaging used (to assure compliance with state law);
  - presentations delivered to the board and/or potential investors within the past 2 years; and
  - a list of all law firms, accounting firms, consulting firms and similar professionals who the company uses or expects to use.<sup>15</sup>
- In addition, the AML procedures require extensive due diligence on investors, including a bad actor questionnaire, to protect SSIC as well as its portfolio companies.<sup>16</sup> The Compliance Manual also contains a Code of Ethics and an Annual Certification of Compliance, which all employees must read and sign, respectively. SSC has assigned a compliance officer, Greg Gentile, to monitor compliance with the AML policy, provide training, monitor changes in the law, review and resolve AML issues and reports of suspicious activity, and ensure that records are properly maintained.<sup>17</sup> These procedures, together with the previously outlined due diligence of potential and current portfolio companies, surpass Fin-CEN's guidance for financial institutions to comply with the Bank Secrecy Act.<sup>18</sup>

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<sup>13</sup> The tax analyses are extensive, essentially an audit.

<sup>14</sup> Similarly, SSIC conducts the equivalent of an environmental audit, with additional requests specific to borrowers operating in California.

<sup>15</sup> Customer Intake Checklist.

<sup>16</sup> *Id.*, Exhibits D & A.

<sup>17</sup> *Id.* § 15.3.

<sup>18</sup> See <https://www.fincen.gov/resources/statutes-regulations/guidance/bsa-expectations-regarding-marijuana-related-businesses>. Neither SSIC nor SSC file FinCEN suspicious activity reports, as neither is a financial institution required to do so.

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## NASDAQ

The Nasdaq Stock Market requires the companies listing on its exchange to comply with U.S. federal laws. The following paragraph below is from its website under FAQ:

In determining whether to initially list a company or continue a company's listing when it changes its business activities, Nasdaq does not make subjective or value judgements about the business the company operates. However, Nasdaq cannot initially list or continue the listing of a company whose current or planned activities are in violation of U.S. federal law or the law in a jurisdiction where the company operates. In assessing the legality of a company's activity, Nasdaq largely relies on the risk factors and other disclosures made in the company's filings with the Securities and Exchange Commission, although Nasdaq may also request additional information from the company where necessary.

For the reasons explained in the next section, the Company will meet that standard as its business will not violate U.S. federal law or the law in any jurisdiction where the Company operates.

## LEGAL ANALYSIS

We analyzed the potential criminal exposure of the Company and its shareholders solely under the Applicable Federal Laws in connection with the Company's proposed (i) equity investing in, and lending to, companies complying with all applicable laws, both federal and state, such as Cannabis Related Businesses and (ii) lending to Cannabis Companies.<sup>19</sup> The legal landscape in the cannabis industry is rapidly changing, and enforcement priorities for prosecutors, investigators, and regulators are difficult (if not impossible) to predict, may be influenced by political considerations (and thus a moving target), and may lack consistent application, all of which are beyond the scope of this opinion. Based on our review of case law and other authorities, we note the following:

- SSIC's investments (debt and equity) in companies complying with all applicable laws will be entirely legal and could not be claimed to violate the CSA. All of SSIC's equity investments and some of its lending will be to companies complying with *all* applicable laws including the CSA, even if some derive some income from companies licensed in state regulated cannabis programs (i.e., Cannabis Related Businesses). As mentioned in the description of SSIC's business above, these companies could include agro-technology, biotechnology, life sciences, medical research or the sale of equipment or goods used in the cannabis and hemp industries. Because the investments in, and loans to, wholly legal businesses will themselves be legal, we

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<sup>19</sup> For the purposes of this opinion, we do not assess the potential regulatory issues with the SEC, the Financial Industry Regulatory Authority ("FINRA"), the Financial Crimes Enforcement Network ("FinCen"), or foreign authorities.

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dedicate the rest of our discussion to SSIC's loans to companies operating in the state regulated cannabis programs.

- In that regard, some of SSIC's debt investments will be to state-legal Cannabis Companies complying with all state laws, but due to the federal prohibition on cannabis under the CSA, are not complying with federal law (i.e. Cannabis Companies).
- Federal prosecutors have considerable discretion to pursue potential cannabis-related offenses under U.S. criminal laws. To date, the matters filed by prosecutors have been focused on growers, producers, and distributors within the U.S. that have violated federal law and/or state and local laws where they are located.<sup>20</sup> In other words, these prosecutions have involved not only violations of federal law, but also activities which were illegal under state or local cannabis laws.
- As described in more detail below, SSIC does not cultivate, distribute, sell, or even possess cannabis. Nor does SSIC process or handle payments for cannabis or cannabis products.<sup>21</sup> Principal and interest payments on loans are not tied to borrowers' sales of cannabis.<sup>22</sup> SSIC also does not place advertisements for the sale of cannabis or own, control or manage real estate on which cannabis is trafficked.<sup>23</sup>
- SSIC does not violate the DPL. The CSA exempts from criminal liability under the DPL "any person authorized by local, State, or Federal law to manufacture, possess, or distribute such items." 21 U.S.C. § 863(f)(1). To the extent any Cannabis Related Business to which SSIC makes an equity investment or loan sells or possesses items primarily intended or designed for use with cannabis, the items are authorized by state law legalizing cannabis, and such items for that use, and the items and related activities are exempt by state law authorization under section 863(f)(1).
- SSIC also does not violate MCA laws. The Company deliberately operates its business openly, does not accept cash payments from its customers, and has an AML policy, which includes procedures to assure transparency of the sources of funds.<sup>24</sup>

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<sup>20</sup> See, e.g., Superseding Indictment, *U.S. v. Hoang*, Case No. 3:17-cr-70, 2017 WL 9855203 (S.D. Iowa); Press Release, U.S. Dep't of Justice, Washington, D.C. Post Office Manager and Two Letter Carriers Found Guilty of Bribery and Conspiracy to Distribute Marijuana (Jul. 24, 2017), available at <https://www.justice.gov/opa/pr/washington-dc-post-office-manager-and-two-letter-carriers-found-guilty-bribery-and-conspiracy>.

<sup>21</sup> SSIC Factual Certification at ¶ 1.

<sup>22</sup> *Id.* ¶ 8.

<sup>23</sup> *Id.* ¶ 1.

<sup>24</sup> *Id.* ¶ 12.

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**Our opinion focuses on the CSA, MCA and DPL, and based on the current status of state laws regarding cannabis as of the date of this letter, it is our view that the CSA, MCA and DPL are more stringent. Therefore, it is our opinion that, if SSIC complies with the CSA, MCA and DPL, and will not be aiding and abetting the violation of or conspiring to violate these federal laws, then in addition to not violating the CSA, MCA, and DPL, SSIC will meet state law standards because SSIC will not be making equity investments in companies engaged in the cultivation, distribution or possession of marijuana in the U.S., and will not be making debt investments in companies engaged in the cultivation, distribution or possession of marijuana in the U.S. other than companies engaged in such activities in compliance with applicable state and local laws.**

## **I. FEDERAL LAW**

Congress gives federal agencies significant authority in executing federal laws.<sup>25</sup> Prosecutorial discretion and Department of Justice (“DOJ”) considerations of whether to enforce against a particular Cannabis Company are discussed in more detail in Section IV. First, we will analyze the Applicable Federal Law with respect to SSIC’s business activities.<sup>26</sup> SSIC is not violating Applicable Federal Law through its business as described in the SEC N-2 because, among other considerations, SSIC does not engage in the conduct targeted by the relevant statutory provisions of the CSA, does not indirectly violate the CSA through aiding and abetting or conspiracy theories, and is not engaged in money laundering. As explained further below, SSIC’s conduct does not violate the Applicable Federal Law.

## **II. THE CSA**

SSIC’s operations as described above and in its SEC N-2, for the reasons explained below, will not violate the CSA.

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<sup>25</sup> See 21 U.S.C. §§ 822(a) and 812(c).

<sup>26</sup> We note that, for any analysis of criminal statutes, including the CSA and applicable indirect federal law (aiding and abetting, and conspiracy), the statutory construction rule of lenity, which arises out of due process concerns, applies and requires that interpretation of ambiguous statutory criteria for criminal offenses be construed as narrowly as possible and in the light most favorable to the defendant. *United States v. DeAlba*, No. 2:12-cr-00079, 2012 WL 5288756, at \*1 (D. Nev. Sept. 14, 2012). See also, e.g., *Carter v. Welles-Bowen Realty, Inc.*, 736 F.3d 722, 729 (6th Cir. 2013) (“The rule of lenity tells courts to interpret ambiguous criminal laws in favor of criminal defendants.”); *Vera v. O’Keefe*, 791 F. Supp. 2d 959, 964 (S.D. Cal. 2011) (same).

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Loans to any Cannabis Company will be limited to companies complying fully with and, if legally required, licensed in state-regulated cannabis programs, and will otherwise be structured in full compliance with federal and state laws.

**SSIC does not and will not traffic in cannabis**

The cultivation, distribution, and sale of cannabis remain illegal under the CSA,<sup>27</sup> as do placing advertisements for the sale of cannabis and selling non-exempted cannabis paraphernalia.<sup>28</sup> SSIC does not do any of those things. SSIC does not cultivate, distribute, sell, or even possess cannabis. Nor does SSIC process or handle payments for cannabis or cannabis products.<sup>29</sup> Principal and interest payments on loans are not tied to borrowers' sales of cannabis.<sup>30</sup> SSIC also does not place advertisements for the sale of cannabis or own, control or manage real estate on which cannabis is trafficked.<sup>31</sup>

**SSIC's loans to companies licensed in state regulated cannabis programs will not violate CSA Section 856**

While a borrower's real estate may be secured as collateral for the loan, SSIC will not violate section 856, known as the "Crack House Statute." Entities or persons who manage or control a property and knowingly make that property available for the purposes of manufacturing, distributing, or using any controlled substances can be found liable under the CSA, section 856(a), which states:

Except as authorized by this subchapter, it shall be unlawful to—

(1) knowingly open, lease, rent, use, or maintain any place, whether permanently or temporarily, for the purpose of manufacturing, distributing, or using any controlled substance;

(2) manage or control any place, whether permanently or temporarily, either as an owner, lessee, agent, employee, occupant, or mortgagee, and knowingly and intentionally rent, lease, profit from, or make available for use, with or without compensation, the

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<sup>27</sup> 21 U.S.C. § 801 *et seq.*

<sup>28</sup> *Id.* §§ 841, 863(a).

<sup>29</sup> SSIC Factual Certification at ¶ 1.

<sup>30</sup> *Id.* ¶ 8.

<sup>31</sup> *Id.* ¶ 1.

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place for the purpose of unlawfully manufacturing, storing, distributing, or using a controlled substance.

SSIC will not violate section 856(a)(1) as it will never own or control real estate on which cannabis is sold or used in violation of federal law and accordingly cannot open, lease, use, or maintain the property.<sup>32</sup>

SSIC likewise will not violate section 856(a)(2) as a mortgagee. Section (a)(2) was added years after (a)(1) to enforce against those who knowingly and purposefully were making their warehouses available for drug use during “raves.”<sup>33</sup> SSIC should not be liable under section 856(a)(2) for three reasons: first, SSIC does not “manage or control” any property where prohibited activities may occur; second, and related to the first, SSIC is not an “owner” or a “mortgagee” as that term is used traditionally or in section 856; third, the legislative history further supports that property used for state legal medical cannabis was never an intended target of section 856(a)(2).

SSIC never manages or takes possession or control of its borrowers’ real estate.<sup>34</sup> Instead, SSIC’s loan agreements require that a borrower sell certain assets, including real estate, to re-pay the loan if necessary in the event of a default.<sup>35</sup> SSIC also has no legal access to the property, except for limited inspection rights provided by agreement.<sup>36</sup> SSIC will never take ownership or control of any property on which any cannabis activity is occurring in violation of the CSA.<sup>37</sup>

Furthermore, SSIC’s loans are never solely directed for the purpose of purchasing any property, but can be used to fund any of the borrower’s general corporate purposes, including paying off prior indebtedness.<sup>38</sup> None of the Supporting Documents authorize or anticipate any direct management or control by SSIC over any of the borrowers or the underlying secured properties.

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<sup>32</sup> *Id.* ¶ 9.

<sup>33</sup> H.R. CONF. REP. 108-66 (“This section, known as the Illicit Drug Anti-Proliferation Act, helps to protect children by amending the Controlled Substances Act to expand the ‘crack house’ statute. This expansion makes it clear that anyone who knowingly and intentionally uses their property, or allows another person to use their property, for the purpose of distributing or manufacturing or using illegal drugs will be held accountable. This section raises the penalties for people who traffic in a substance often marketed to children at clubs; and authorizes funds for drug prevention activities.”).

<sup>34</sup> SSIC Factual Certification ¶ 9.

<sup>35</sup> *Id.*

<sup>36</sup> *Id.*

<sup>37</sup> *Id.*

<sup>38</sup> *Id.* ¶ 10.

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Tellingly, we found not even one case of a prosecution against a mere mortgagee under section 856(a)(2). In the reported case law, section 856 is used most often to prosecute individuals who are both owners and operators of crack houses, pill mills, methamphetamine labs or illegal (under state or federal law) marijuana grow houses.<sup>39</sup> Those defendants were charged both with the manufacture or distribution of an illegal controlled substance and under section 856. Even when a section 856 claim is brought alone, the defendant generally played a role in the underlying trafficking activities.<sup>40</sup> Consequently, cases brought under this section generally rely on evidence that the person was present on the property and took affirmative steps to maintain or manage the property.<sup>41</sup>

SSIC has none of the involvement seen in the section 856 cases. The borrower's property serves solely as collateral to secure repayment of its loan obligations to SSIC. If the borrower defaults, the borrower is required to sell assets, including its real property, to pay back the loan.<sup>42</sup> SSIC's involvement with the real estate is limited to listing it as a secured asset and hiring a third party to conduct periodic reasonable diligence activities, as set forth in the agreements with borrowers.<sup>43</sup>

SSIC contractually obligates borrowers to sell certain assets in the event that they default on a loan from SSIC.<sup>44</sup> While SSIC may designate real estate as security for a loan, SSIC is not the typical

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<sup>39</sup> See, e.g., *United States v. Griffith*, 397 Fed. Appx. 613 (11th Cir. 2010) (methamphetamine lab); *United States v. Henry*, 307 Fed. Appx. 331 (11th Cir. 2009) (crack house); *United States v. Garcia*, 405 F.3d 1260 (11th Cir. 2005) (marijuana grow house).

<sup>40</sup> See e.g. *United States v. Chen*, 913 F.2d 183 (5th Cir. 1990).

<sup>41</sup> See, e.g., *United States v. Clavis*, 956 F.2d 1079 (11th Cir. 1992) (considering factors such as whether defendants leased premises, were regularly present on premises for purposes of conducting repairs, paid rent for premises, or accepted delivery of keys from landlord); *United States v. Sadler*, 750 F.3d 585 (6th Cir. 2014) (considering evidence that one defendant owned the pain-management clinic, signed the clinic's lease and rent checks, was the office repairman, and was considered the boss of the clinic by the employees, and that lessees of the clinic properties considered another defendant a point of contact for complaints, payments, and other issues); *United States v. Molina-Perez*, 595 F.3d 854 (8th Cir. 2010) (defendant leased the property, visited the property weekly, and referred to men on property as "his workers," among others).

<sup>42</sup> SSIC Factual Certification ¶ 9.

<sup>43</sup> *Id.* The Fifth Circuit's opinion in *United States v. Chen*, 913 F.2d 183 (5th Cir. 1990), is often cited as an example of a case where the owner was not directly involved but still found liable under 856(a)(2) for other individuals' CSA violations. In *Chen*, the motel owner found to be liable under section 856(a)(2) was at least deliberately ignorant of the activity. Control and ownership were not at issue; the defendant and her family lived on the property. The question was whether Chen's deliberate ignorance was sufficient to meet the knowledge element. The facts reveal that Chen was somewhat involved in at least fostering the underlying crimes. Chen had taken several direct actions (for example, warning dealers when law enforcement were coming to the property) such that she was seen as playing an active role in allowing the activity to continue.

<sup>44</sup> SSIC Factual Certification ¶ 9.

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mortgagee for several reasons: (1) the loaned money is not tied solely to the purchase of any specific land or a building, but rather can be used for any number of purposes;<sup>45</sup> (2) SSIC neither exerts nor is entitled to management or control of the real estate; and (3) SSIC will not under any circumstances own, possess, or control the borrower's property.<sup>46</sup> SSIC merely requires the borrower to sell its real property if necessary to repay the loan in the event of a default.<sup>47</sup> Stated another way, pursuant to SSIC's credit agreements, the mortgages are taken only as credit support and a source of borrower liquidity for repayment of the loan from SSIC to the borrower. SSIC's involvement is incidental, and not necessary to the underlying activities occurring on the property.

Section 856's legislative history further supports that SSIC is not the type of entity that Congress sought to target with the Crack-House Statute. A court's goal when interpreting a statute is to effectuate Congress' intent. Stated differently, "[w]hen a court interprets a statute, the court articulates the meaning of the words of the legislative branch."<sup>48</sup> Section 856(a) was enacted in 1986 to address the proliferation of crack houses, where those managing or controlling property were permitting the trafficking and use of crack cocaine at the premises. Subsection (a)(2) was added in 2003 to address a similar concern about drug-fueled raves targeting particularly the young.<sup>49</sup> At that time, even though several states had already legalized medical cannabis, there is no mention in the legislative history that medical cannabis businesses in these states were a target or a concern of this law.<sup>50</sup> In the intervening time, many more states have adopted state medical and adult-use cannabis laws; yet we know of no case in which a person or entity was criminally charged under section 856(a)(2) for making property available to a state-legal cannabis entity.<sup>51</sup>

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<sup>45</sup> *Id.* ¶ 10.

<sup>46</sup> *Id.* ¶ 9.

<sup>47</sup> *Id.*

<sup>48</sup> Robert A. Katzmann, *Judging Statutes* 8 (2014).

<sup>49</sup> *See supra* note 27.

<sup>50</sup> *See id.*; *see also* 149 Cong. Rec. 9378-93.

<sup>51</sup> There is a case in a civil context where a judge dismisses an entity's unjust enrichment claim on the basis that the actor has "unclean hands" due to violating portions of the CSA, including section 856(a)(2). In that case, the court stated that "[p]roviding funds in exchange for equity violates the CSA because it would allow the investor to profit from the cultivation, possession, and sale of marijuana. *Bart St. III v. ACC Enterprises, LLC*, No. 217CV00083GMNVCF, 2020 WL 1638329, at \*9 (D. Nev. Apr. 1, 2020). SSIC is clearly distinguishable from *Bart St. III* because it does not receive any equity from its borrowers, and therefore will not profit from activities that violate the CSA.

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## Applicable Indirect Federal Law

Based on its operations described above, SSIC is also not violating the applicable indirect federal law, discussed herein.

### 1. Aiding and Abetting

Aiding and abetting a violation of the CSA is federally illegal. Pursuant to 18 U.S.C. § 2(a), whoever commits an offense against the United States or aids, abets, counsels, commands, induces, or procures its commission, is punishable as a principal. To convict a defendant for aiding and abetting, a prosecutor must prove beyond a reasonable doubt: (1) that the accused had specific intent to facilitate the commission of a crime by another; (2) that the accused had the requisite intent of the underlying substantive offense; (3) that the accused assisted or participated in the commission of the underlying substantive offense; and (4) that someone committed the underlying offense.<sup>52</sup> The government must prove that the defendant associated with the criminal venture purposefully participated in the criminal activity, and sought by its actions to make the venture successful.<sup>53</sup> SSIC is not violating the CSA under an aiding and abetting theory because it does not meet the elements of an aiding and abetting violation, as will be discussed below.

Two federal cases provide legal and factual context for understanding the current framework for analyzing whether certain conduct rises to the level of aiding and abetting, even when the accused knows of the principal's intent. Both cases held that the sale of innocent goods or services to criminals or criminal enterprises, without more, does not rise to the level of aiding and abetting. The seminal case on aiding and abetting as it relates to this issue dates back to 1940. In *U.S. v. Falcone*, Judge Learned Hand held that individuals who supplied "sugar, yeast, and cans, out of which [the] alcohol was distilled" by illicit distillers, were not sufficiently "positive" to justify a "prosecution for conspiracy or abetting" because the defendants providing sugar and jars did not have a "stake in [the] outcome" of the criminal enterprise.<sup>54</sup>

Building on *Falcone*, Judge Posner held in the Seventh Circuit opinion that a clothing store clerk who sold a red dress to a sex worker, knowing that she wore the dress for prostitution, was not guilty of aiding and abetting or conspiracy because "if the clerk didn't make the sale, she would buy, at some trivial expense in time or money, an equivalent outfit from someone ignorant of her trade. That is where the requirement of proving the defendant's desire to make the illegal activity

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<sup>52</sup> Criminal Resource Manual 2474, *Elements Of Aiding And Abetting*, <https://www.justice.gov/usam/criminal-resource-manual-2474-elements-aiding-and-abetting>; *United States v. Bancalari*, 110 F.3d 1425, 1429 (9th Cir. 1997).

<sup>53</sup> See *United States v. Landerman*, 109 F.3d 1053, 1068 n.22 (5th Cir. 1997).

<sup>54</sup> *United States v. Falcone*, 109 F.2d 579, 581 (2d Cir. 1940).

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succeed cuts off liability.”<sup>55</sup> In a more recent opinion, Posner noted that in the earlier case the clerk’s sale of the dress was not “really helping her or promoting prostitution” the way that he would be if for example he “recommended customers to her in exchange for a commission.”<sup>56</sup> The Hand and Posner opinions illustrate where federal courts have drawn the line between activity that rises to the level of aiding and abetting on the one hand and mere commercial activity that involves knowledge of a customer’s criminal activities, and technically facilitates it, on the other hand. In the latter case, the individual or entity engaging in commercial activity does not have the requisite intent or “stake” in the customer’s criminal business to rise to the level of aiding and abetting.

SSIC is not violating the CSA under an aiding and abetting theory. First, as a general point, aiding and abetting liability cannot be used to prosecute all companies doing business with companies operating in state regulated cannabis programs. As set forth in *Falcone* and *Zafiro*, although businesses providing incidental products or services to state-legal cannabis businesses are purposefully engaging in commercial activity and may have knowledge that such customers are conducting federally illegal acts using their products, these businesses do not have sufficient intent or economic interest in the furtherance of their customers’ business to rise to the level of aiding and abetting.

Second, and relatedly, SSIC would not meet the elements of aiding and abetting a CSA violation. SSIC has neither the specific intent to facilitate a violation of the CSA nor the requisite intent to violate the CSA itself. Furthermore, a prosecutor likely would not be able to prove that SSIC provides the type or level of assistance required to show active participation in a criminal enterprise.

Proving the first element required for aiding and abetting liability, specific intent, is difficult where a company is providing legal ancillary business products or services to persons alleged to be violating federal law. Case law in this area recognizes that certain acts within the universe of state-regulated cannabis programs do not meet the specific intent threshold. Courts differentiate between people or entities who are actually participating in the underlying crime and those who are involved in otherwise legal, incidental roles.<sup>57</sup> As discussed in Section I above, SSIC’s only business with companies licensed in state cannabis programs is lending funds through arms-length transactions. The Company does not seek to make these borrowers’ businesses better or more successful. The Company does not share revenues with its Cannabis Company borrowers or have any stake in the business ventures of its loan customers in the form of a sales commission or

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<sup>55</sup> *United States v. Zafiro*, 945 F.2d 881 (7th Cir. 1991).

<sup>56</sup> *United States v. Colon*, 549 F.3d 565 (7th Cir. 2008) (discussing *Zafiro*).

<sup>57</sup> See *Conant v. Walters*, 309 F.3d 629, 635-36 (9th Cir. 2002) (doctor recommending cannabis to patient lacked specific intent); *City of Garden Grove v. Superior Court*, 157 Cal. App. 4th 355, 368 (2007) (police officers returning medical cannabis to patient would lack specific intent to violate CSA).

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revenue sharing arrangement.<sup>58</sup> Proving specific intent is particularly difficult where, as here, a company is providing legal financing services and verifying its customers' state licensure.

The second element for aiding and abetting, intent to violate the CSA, requires proof that "a person actively participates in a criminal venture with full knowledge of the circumstances constituting the charged offense."<sup>59</sup> While SSIC lends to state-legal cannabis businesses, SSIC lacks the intent to violate the CSA. Indeed, it has structured its business so that it does not violate the CSA. SSIC is not incentivized to promote its Cannabis Company borrowers' financial success. SSIC does not have any financial interest in whether any borrower achieves financial success selling cannabis products.<sup>60</sup> The principal and interest payments that Cannabis Company borrowers are obligated to make on loans offered by SSIC do not increase with the borrower's profitability, and remain the same regardless of how financially successful the borrower is at any given time. Similar to the distiller in *Falcone*, although more attenuated since SSIC is not providing products for distilling alcohol, or in this case, producing cannabis, but merely financing for a business, SSIC does not have the requisite "stake in the outcome" to constitute intent.

Furthermore, because SSIC seeks to obtain sufficient security for the payment amounts and uses contractual provisions, and if necessary a debt servicing company, to seek to ensure that the borrower can liquidate enough property to pay the loan, SSIC seeks to receive loan payments regardless of a borrower's success. In other words, SSIC has contractual protections and collateral mechanisms in place to protect its debt investments in case a Cannabis Company cannot make payments. Accordingly, SSIC does not have an incentive to make the borrower Cannabis Company more financially or operationally successful. SSIC's economic interest in the Cannabis Companies to which it provides debt financing does not rise to the level required to prove aiding and abetting.

The third element of an aiding and abetting violation, requiring proof that an individual or entity actively participated in the commission of the underlying offense, does not encompass every activity or service that may ultimately assist the wrongdoer in committing a crime. If this element were interpreted this broadly, aiding and abetting could apply to all individuals and companies that transact with Cannabis Companies in states where cannabis has been legalized. Because the hypothetical Cannabis Company is publicly licensed by a state government and operating openly, any number of individuals and entities could easily know that the Cannabis Company is growing and/or selling cannabis, in violation of the CSA, while providing goods or services that further the business's ability to succeed in its venture. In fact many legal, public companies do without any,

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<sup>58</sup> SSIC Factual Certification ¶ 8.

<sup>59</sup> See *Rosemond v. United States*, 134 S. Ct. 1240, 1248-49 (2014).

<sup>60</sup> SSIC Factual Certification ¶ 8.

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or even any threatened, criminal enforcement for aiding and abetting or other indirect violations of the CSA -- e.g., Akerna (NASDAQ: KERN) (provider of seed-to-sale and point-of-sale tracking to state-legal Cannabis Companies); Greenlane Holdings, Inc. ((NASDAQ: GNLN) (distributor of vaporizers and smoking accessories to cannabis dispensaries); GrowGeneration Corp. (NASDAQ: GRWG) (chain of hydroponics stores in states that have legalized cannabis cultivation); AFC Gamma (NASDAQ: AFCG) (real estate investment trust ("REIT") providing loans to state cannabis licensees); India Globalization Capital, Inc. (NYSE AMERICAN: IGC) (a Maryland-based company that distributes patent-pending products for microdosing as well as cannabinoid based products); Innovative Industrial Properties Inc. (NYSE: IIPR) (REIT leasing properties for use as state-licensed cannabis facilities). All of these companies are publicly listed and openly state their business dealings with Cannabis Companies, but none has been subject to federal charges, due in part to the elements required to prove liability for indirect CSA violations, and also to the lack of enforcement priority, which we discuss later in this letter. There are plenty of other examples of service providers, like SSIC, that transact with Cannabis Companies but would not be found guilty of aiding and abetting under the CSA. A lawyer providing legal services to a cannabis business knows that the client's business is violating the CSA, but receives a fee for service which is not dependent on the business achieving a certain level of revenues or profits. State and local governments collecting tax revenue from licensed cannabis businesses "know" their tax constituents are selling controlled substances. Similarly, insurance businesses providing services to state-legal cannabis entities "know" their customers are selling cannabis and provide services that further the business's ability to succeed in its venture, particularly because in many state jurisdictions, insurance is required to obtain a state cannabis license.

Accordingly, the inquiry focuses on the type and level of assistance or participation, together with the individual's intent. The "classic case" of aiding and abetting would be the getaway driver for a bank robbery, where the aider/abettor not only has full knowledge of the underlying offense but also purposefully acts in such a way as to actively and directly facilitate such offense.<sup>61</sup> Providing legal products or services via arm's length agreements, however, is not the kind of active participation in a criminal enterprise required to prove aiding and abetting liability.<sup>62</sup> Similarly, a company like SSIC offering loans to Cannabis Companies, similar to the example of the attorney providing legal services, is not "actively participating" in the underlying criminal enterprise because it lacks the requisite intent. Active participation in the criminal venture would be

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<sup>61</sup> See, e.g., *United States v. Cejas*, 761 F.3d 717, 728-29 (7th Cir. 2014), reh'g and suggestion for reh'g *en banc* denied (Oct. 20, 2014) (defendant parked truck in reverse in driveway, and carried a gun, suggesting he knew a drug deal was occurring and intended to help if necessary).

<sup>62</sup> See *In re: Way to Grow, Inc.*, 597 B.R. 111, 127 (Bankr. D. Colo. 2018) (company knowingly selling hydroponic equipment to customers in cannabis industry did not have specific intent to violate CSA because company's intent was to sell product to any clientele engaged in hydroponic growing).

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challenging to prove with respect to a lender that, like SSIC, does not share revenues with its borrowers or take any type of commission or additional fees that are proportionate to or contingent upon any borrower's business success.<sup>63</sup> While such a company may inherently have knowledge of the underlying activity, it is highly unlikely that the company would be found to "actively participate" in the criminal enterprise when it simply provides financing that can be used for any general corporate purpose of the company. Additionally, as explained earlier in this letter, SSIC does not make equity investments into Cannabis Companies, and also does not receive increased principal or interest payments on its loans if a borrower achieves a certain level of revenues or profitability. Providing debt financing to Cannabis Companies, the way SSIC does, is not the type of "active participation" that constitutes an aiding and abetting offense.

The managerial assistance outlined in the Factual Background section of this Letter, even if in the extremely rare event that a borrower accepts SSIC's offer to provide any,<sup>64</sup> would not result in aiding and abetting. All assistance offered is geared to extend the rule of law, good corporate governance and good financial and accounting hygiene, but not to help a borrower with cannabis operations or, needless to say, to conceal cannabis operations or funds.<sup>65</sup> The assistance only would help a company in the state-regulated cannabis industry operate legally and responsibly, with appropriate corporate governance, accounting procedures and insurance coverage.

## 2. Conspiracy

A person or entity may be criminally liable for conspiring to violate the CSA.<sup>66</sup> Conspiracy requires a showing that two or more people were in agreement to commit a crime and that all conspirators have the intent to commit the conspiracy's objective, although each individual need not know all the details of the crime or all of the members of the conspiracy.<sup>67</sup>

While ancillary product or service providers may agree to provide the product and know of the Cannabis Company's business, they are not necessarily agreeing to commit a crime or intending that objective. When the agreement is for the sale of goods or services and not dependent on the cannabis business committing any crime, the agreement should not be interpreted as one to commit a crime. Here, the agreements are simply for SSIC to provide a loan and the borrower to provide

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<sup>63</sup> SSIC Factual Certification ¶ 8.

<sup>64</sup> BDC portfolio companies only rarely accept a BDC's offer of managerial assistance. All but one of the several '40 Act attorneys in and outside Dentons with whom we spoke on this issue were unaware of a portfolio company ever accepting a BDC's offer to provide managerial assistance.

<sup>65</sup> SSIC Factual Certification ¶ 11.

<sup>66</sup> 21 U.S.C. § 846.

<sup>67</sup> *United States v. Caldwell*, 589 F.3d 1323, 1329 (10th Cir. 2009).

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repayment — and SSIC’s agreements are not contingent on any actual cultivation, distribution, sale or possession of cannabis.<sup>68</sup>

Federal prosecution of ancillary service providers to the state-regulated cannabis industry on these grounds is, at this point, difficult to fathom against companies like SSIC. In theory, conspiracy charges could be applied against any person knowingly contracting with a state-legal cannabis business, including even such innocuous actors as utility companies or hardware stores. Ancillary service providers to a state-legal industry, however, are not the sort of actors engaging in the kinds of actions that are targeted for federal prosecution.

In practice, federal prosecutors usually limit conspiracy charges to those who in some way were actually involved with the offense itself and actively desired for it to succeed, generally sharing in its success in some way — not every single person or entity who was aware of the objective and provided ancillary services in some manner. As mentioned above, SSIC does not share revenues with customers or take any type of commission fee that is contingent upon the business success of its customers. These facts, in addition to the nature of its services, show that SSIC lacks the required *mens rea* for the underlying federal crime.

### **III. THE DPL**

Pursuant to the Drug Paraphernalia law contained in the CSA, 21 U.S.C. § 863, it is unlawful to sell, transport in interstate commerce, or import/export “drug paraphernalia,” which the CSA defines as “any equipment, product, or material of any kind which is primarily intended or designed for use in manufacturing, compounding, converting, concealing, producing, processing, preparing, injecting, ingesting, inhaling, or otherwise introducing into the human body a controlled substance...” 21 U.S.C. § 863(d). A fairly recent federal appellate court decision clarified that items which have a variety of legal uses, which are not specifically designed and manufactured to make and consume controlled substances, are not necessarily considered drug paraphernalia under the DPL without strong evidence indicating otherwise. *See United States v. Romans*, 823 F.3d 299, 318 (5th Cir. 2016) (in holding that a hydroponic system did not meet the definition of “drug paraphernalia” the court reasoned that it was not “clearly and directly related to the production, distribution, or consumption of drugs.”). As a result, entities that manufacture products that have legal uses other than primarily for manufacturing or consuming controlled substances should not violate the DPL.

For the same reasons that the loans to Cannabis Companies complying with state, but not all federal, laws, or equity investments in Cannabis Related Businesses complying with all applicable laws do not violate the CSA, they do not violate the DPL. In addition, the CSA exempts from

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<sup>68</sup> SSIC Factual Certification ¶ 10.

criminal liability “any person authorized by local, State, or Federal law to manufacture, possess, or distribute such items.” 21 U.S.C. § 863(f)(1). To the extent any Cannabis Related Business to which SSIC makes an equity investment or loan sells or possesses items primarily intended or designed for use with cannabis, the items are authorized by state law legalizing cannabis and such items for that use, and the items and related activities are exempt under section 863(f)(1).

**Based on the foregoing, it is our opinion that SSIC will not violate Section 863 of the CSA, will not be liable for aiding and abetting a violation of Section 863 of the CSA or be liable for conspiring to violate Section 863 of the CSA.**

#### **IV. THE MCA**

U.S. federal money laundering laws (18 U.S.C. § 1956) criminalize monetary transactions involving proceeds of “specified unlawful activity,” which includes violating the CSA. Broadly speaking, section 1956 criminalizes financial transactions involving the proceeds of specified unlawful activities that (1) conceal the nature, source, or ownership of proceeds they produced; (2) promote further illegal offenses; or (3) evade reporting requirements.

SSIC is not violating section 1956. It deliberately operates its business openly, does not accept cash payments from its customers, and has an AML policy, which includes procedures to assure transparency of the sources of funds.<sup>69</sup> Absent particular circumstances (such as deliberately disguising the source of funds or reinvesting them in the underlying criminal activity, neither of which is applicable here), proving that an ancillary service provider violated section 1956 is difficult. Generally, an ancillary service provider neither specifically intends to promote the underlying activity nor (absent other action) has knowledge that the transaction is designed to conceal the source of such funds.

Furthermore, SSIC’s business activities fall well outside the kinds of transactions that the U.S. government has been targeting for money laundering enforcement. Most of these cases involve international money laundering and criminal and sham enterprises, or bribery within legitimate businesses, none of which is even remotely involved here. These cases demonstrate how the federal government is choosing to allocate its limited resources for enforcement of money laundering statutes, with a focus on international crime rings.<sup>70</sup> Moreover, despite the proliferation

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<sup>69</sup> SSIC Factual Certification ¶ 12; Compliance Manual, Ch. XV.

<sup>70</sup> For example, recent money laundering prosecutions include: (1) *U.S. v. Wu*, 1:20-cr-00015 (E.D. Va. 2020) (A Chinese National pleaded guilty to money laundering of proceeds from large-scale cocaine trafficking of Latin American drug trafficking organizations in the U.S.); (2) *U.S. v. Chatburn Ripalda*, No. 18-20312-CR, 2019 WL 2716237 (S.D. Fla. June 28, 2019) (A Miami-based financial advisor pleaded guilty to participating in a money laundering conspiracy related to a scheme to pay bribes to officials of Ecuador’s state-owned and state-controlled oil company, in violation of the Foreign Corrupt Practices Act (FCPA), and also money-laundering statutes.); (3) *U.S. v. Zong*, Civil No. 3:20-cv-00126-JMK (U.S. District Court D. Alaska, 2016) (A U.S. Citizen conspired with three Iranian nationals to conduct fraudulent transactions to convert and remove Iranian funds from Korean bank accounts and laundered the proceeds into shell companies both in the U.S. and abroad.).

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of state-legal cannabis activity throughout the United States, no cases have been brought for violations of section 1956 against state-licensed Cannabis Companies within the past six years.

**Based on the foregoing, in our opinion SSIC's investment activity will not constitute an offense under Section 1956 (i.e., obtaining proceeds from an unlawful activities) or constitute aiding and abetting an offense under the MCA.**

## **V. ENFORCING FEDERAL LAWS**

### **A. Executing Federal Laws**

Congress gives federal agencies significant authority in executing federal laws, including the Drug Enforcement Agency ("DEA"), the law enforcement arm of the federal government primarily responsible for enforcing the CSA.<sup>71</sup> Further, federal prosecutors have wide latitude in determining when, who, how and even whether to prosecute for alleged violations of federal criminal law.<sup>72</sup> In the federal criminal legal system, "the decision whether or not to prosecute, and what charge to file or bring before a grand jury, generally rests entirely in [the prosecutor's] discretion."<sup>73</sup> That discretion extends to, for example, the decision to prosecute a matter, the selection of charges, whether to enter into a plea agreement, and participation in sentencing.<sup>74</sup>

With respect to business organizations, such as the Company, the United States Justice Manual provides the following guidelines to prosecutors to promote the reasoned exercise of discretion:<sup>75</sup>

- The nature and seriousness of the offense, including the risk of harm to the public, and applicable policies and priorities, if any, governing the prosecution of business organizations for particular categories of crime;
- The pervasiveness of wrongdoing within the business organization, including the complicity in, or the condoning of, the wrongdoing by management;

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<sup>71</sup> See 21 U.S.C. §§ 822(a) and 812(c).

<sup>72</sup> *Oyler v. Boles*, 368 U.S. 448 (1962).

<sup>73</sup> *Bordenkircher v. Hayes*, 434 U.S. 357, 364 (1978).

<sup>74</sup> See United States Justice Manual at § 9-27.110, available at <https://www.justice.gov/jm/justice-manual>.

<sup>75</sup> United States Justice Manual at §§ 9-28.300, 9-28.400, 9-28.500, 9-28.600, 9-28.700, 9-28.800, 9-28.900, 9-28.1200, and 9-28.1300, available at <https://www.justice.gov/jm/justice-manual>.

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- The business organization's history of similar misconduct, including prior criminal, civil, and regulatory enforcement actions against it;
- The business organization's identification of individuals responsible for the misconduct and production of misconduct information;
- The existence, effectiveness, and enforcement of the business organization's pre-existing compliance program;
- The business organization's timely and voluntary disclosure of wrongdoing;
- The business organization's remedial actions, including any efforts to implement an effective corporate compliance program or to improve an existing one, to replace responsible management, to discipline or terminate wrongdoers, to pay restitution, and to discipline wrongdoers;
- Collateral consequences, including whether there is disproportionate harm to shareholders, pension holders, employees, and others not proven personally culpable, as well as impact on the public arising from the prosecution;
- The adequacy of remedies such as civil or regulatory enforcement actions; and
- The adequacy of the prosecution of individuals responsible for the business organization's malfeasance.

**B. DOJ Position on Enforcement of Federal Cannabis Laws**

While Nasdaq has maintained that issuers may not rely entirely on continued prosecutorial discretion as a basis for listing, the absence of *any* prosecutions over the last at least six years of state law compliant Cannabis Companies, let alone their vendors or those providing financial services, is relevant. The federal government has not even indicated that it will start enforcing federal cannabis prohibition against those companies, and no industry observer has suggested that mass federal enforcement of federal cannabis laws is anticipated.

Since December 2014 (more than seven full years), companies strictly complying with state *medical* cannabis laws have also been protected against enforcement by a provision (originally called the Rohrabacher-Farr amendment, now known as the Joyce amendment) in the Omnibus Spending Bill, which prevents federal prosecutors from using federal funds to impede the implementation of medical cannabis laws enacted at the state level.<sup>76</sup> Courts have interpreted the provision to bar the

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<sup>76</sup> Consolidated Appropriations Act, 2021, Public Law No. 116-260, Div. B, § 531, <https://www.congress.gov/bill/116th-congress/house-bill/133/text> (“None of the funds made available under this Act to the Department of Justice may be used, with respect to any of the [states with medical marijuana programs], to prevent any of them from implementing their own laws that authorize the use, distribution, possession, or cultivation of medical marijuana.”).

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DOJ from prosecuting any person or entity in strict compliance with state medical cannabis laws.<sup>77</sup> Additionally, because the Joyce amendment bars prosecutions of state-compliant medical Cannabis Companies, a court would bar related charges against entities providing services or products to the company complying with a state medical cannabis law.<sup>78</sup> The federal government would be barred from prosecuting SSIC for providing services to businesses with state medical cannabis licenses. Moreover, in that six-year period, and even during the tenure of Jeff Sessions as U.S. Attorney General, the federal government has brought no criminal enforcement against *any* state-law compliant Cannabis Companies at all, not just those involved with medical cannabis.

There is no reason to believe that enforcement will increase under President Biden. He has promised federal reform on cannabis, including decriminalization generally. According to the Biden website, a Biden Administration “will decriminalize cannabis use and automatically expunge prior convictions. And, he will support the legalization of cannabis for medical purposes, leave decisions regarding legalization for recreational use up to the states, and reschedule cannabis as a schedule II drug so researchers can study its positive and negative impacts.”<sup>79</sup> The Biden-Sanders Unity Platform, which was released at the time President Biden won the Democratic Party nomination for President, affirmed that his administration would seek to “[d]ecriminalize marijuana use and legalize marijuana for medical purposes at the federal level;” “allow states to make their own decisions about legalizing recreational use;” and “automatically expunge all past marijuana convictions for use and possession.”<sup>80</sup> Biden’s pledge to “decriminalize” cannabis may be reasonably interpreted to mean that any Attorney General under his administration will order U.S. Attorneys not to enforce the federal cannabis prohibition against state law compliant entities and others legally transacting business with them.<sup>81</sup>

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<sup>77</sup> *United States v. McIntosh*, 833 F.3d 1163 (9th Cir. 2016).

<sup>78</sup> See *United States v. Samp*, No. 16-cr-20263, 2017 WL 1164453, at \*2 (E.D. Mich. Mar. 29, 2017) (defendant prosecuted for possessing a firearm while unlawfully using a controlled substance was entitled to evidentiary hearing regarding strict compliance with state’s medical cannabis laws prior to further prosecution by DOJ).

<sup>79</sup> Biden-Harris, “The Biden Plan for Strengthening America’s Commitment to Justice,” <https://joebiden.com/justice/>.

<sup>80</sup> Biden-Sanders Unity Task Force Recommendations: Combating The Climate Crisis And Pursuing Environmental Justice, <https://joebiden.com/wp-content/uploads/2020/08/UNITY-TASK-FORCE-RECOMMENDATIONS.pdf>.

<sup>81</sup> See, e.g., John Schroyer, *Biden to tap Merrick Garland for attorney general, offering stark contrast to anti-cannabis AGs under Trump*, Marijuana Business Daily (Jan. 6, 2021), <https://mjbizdaily.com/biden-to-tap-merrick-garland-for-attorney-general/>.

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Biden has selected Judge Merrick Garland to serve as the U.S. Attorney General under his administration. Judge Garland has not publicly expressed any negative views toward cannabis legalization or decriminalization. During his confirmation hearing before the U.S. Senate, Judge Garland testified that prosecuting companies in “states that have legalized and that are regulating marijuana, either medically or otherwise,” would not be a “useful use of limited resources.”<sup>82</sup> Therefore, the status quo of federal non-enforcement is expected to continue for the foreseeable future.<sup>83</sup> Additionally, industry advocates remain hopeful that some reform will be possible in the coming years, including banking reform. The Secure and Fair Enforcement (SAFE) Banking Act would protect financial institutions and other parties accepting money derived from the state legal cannabis industry by “create[ing] protections for depository institutions that provide financial services to cannabis-related legitimate businesses and service providers for such businesses....”<sup>84</sup> Also recently introduced into Congress is another bill, the States Reform Act, introduced by Rep. Nancy Mace of South Carolina, which would repeal the federal prohibition of cannabis.<sup>85</sup>

**Based on the foregoing, and subject to the assumptions, qualifications and limitations set forth herein, in our opinion, neither SSIC nor its shareholders, for their investment in SSIC, will violate federal law, and specifically the federal Controlled Substances Act, including the Drug Paraphernalia Law, or the Money Laundering Control Act, with respect to the Company’s (i) equity and debt investments in Cannabis Related Businesses and (ii) debt investments in Cannabis Companies. SSIC does not directly or indirectly violate the CSA, does not have the criminal intent for aiding and abetting or conspiracy theories, is not engaged, or planning to engage, in money laundering, and also does not violate the DPL.**

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<sup>82</sup> See *Attorney General Nominee Merrick Garland Testifies at Confirmation Hearing*, C-SPAN (Feb. 22, 2021), <https://www.c-span.org/video/?508877-1/attorney-general-nominee-merrick-garland-testifies-confirmation-hearing>.

<sup>83</sup> Even Supreme Court Justices have commented on federal non-enforcement. In a June 2021 opinion, Supreme Court Justice Clarence Thomas addressed the current state of federal prohibition and suggested that seminal case *Gonzales v. Raich* may be decided differently today: “If the Government is now content to allow States to act ‘as laboratories’ and try novel social and economic experiments,’...then it might no longer have authority to intrude on ‘[the] States’ core police powers...to define criminal law and to protect the health, safety, and welfare of their citizens.’” *Standing Akimbo, LLC v. United States*. 141 S. Ct. 2236, 2238 (2021).

<sup>84</sup> Secure and Fair Enforcement (SAFE) Banking Act, H.R. 1996, 117<sup>th</sup> Cong. (2021).

<sup>85</sup> States Reform Act, H.R. 5977, 117<sup>th</sup> Cong. (2021).

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**Furthermore, the U.S. government's history of enforcement and statements about this legal area indicate that any claim against a company like SSIC is highly unlikely. Last, the long standing Joyce amendment protection of state-legal medical cannabis businesses would bar a federal criminal claim against SSIC for services to those businesses. In conclusion, as explained in this letter, the Company's business will not violate U.S. federal law or the law in any jurisdiction where the Company operates.**

We hereby consent to the filing of this opinion as an exhibit to the Company's Registration Statement on Form N-2, including any amendments and supplements thereto. In giving such consent, we do not hereby admit that we are within the category of persons whose consent is required under Section 7 of the Securities Act, or the rules and regulations of the SEC thereunder.

Sincerely,

/s/ Eric P. Berlin \_\_\_\_\_

Eric P. Berlin

Partner

Dentons US LLP

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Consent of Independent Registered Public Accounting Firm

Silver Spike Investment Corp.  
660 Madison Avenue  
New York, NY

We hereby consent to the use in the Prospectus constituting a part of this Registration Statement on Form N-2 (Pre-Effective Amendment No. 4) of our report dated July 9, 2021, relating to the financial statements of Silver Spike Investment Corp., which is contained in Part A of that Prospectus.

We also consent to the reference to us under the caption "Independent Registered Public Accounting Firm" in the Prospectus.

/s/ BDO USA, LLP  
New York, New York

January 3, 2022

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